

LAW
RELATING
TO
PRESS AND SEDITION
BY
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Collection of Rules and Orders relating to Public Servants,
Copyright Act and Regulations and Laws relating to Press in India,
Brief History of Lahore, etc.,)

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Secretary to the
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LAW

RELATING TO

PRESS AND SEDITION.

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LAW RELATING TO PRESS AND SEDITION

CORRECTIONS

- Page 4, line 48, add "and" before "shall"
- " 5, " 20, omit "of" after "such copies"
- " 8, " 33, for "if is be" read "if it be"
- " 13, " 11, for "Magistry" read "Majesty"
- " 17, Illustration (d) for "Disguilty" read "D is guilty"
- " 21, line 45, omit "and" after "under"
- " 43, Note (4) line 5, for "indentical" read "identical"
- " 43, " (5) " 4, for "offeece" read "offence"
- " 45, Heading for "Indin" read "Indian"
- " 54, section 10, line 7, for "then" read "than"
- " 59, lines 26 and 32, "for tranquility" read "tranquillity"
- " 61, section 6 (1), line 3, for "sections" read "section"
- " 70, section 10, line 4, for "proceeding" read "proceeding"
- " 83, " 26, for "of at" read "of a"
- " 88, " 18, omit the word "law"
- " 89, first line of last paragraph for "his" read "this"
- " 95, " 40, for "thing" read "think"
- " 107, " 11, for "calause" read "clause"
- " 107, " 26, for "except" read "accept"
- " 116, " 4, add "which" before "stands"
- " 117, Act IV of 1915, section 2 (1) (b), for "or Allies" read "of Allies"
- " 118, " " section 2 (2) line 3, for "way" read "may"
- " 119, " " section 3 (1) line 2, add "of" after "accused"
- " 120, line 6, for "sentenced" read "sentence"
- " 127, " 32, add "sections" before "3 to 11"
- " 129, last line for "or all" read "all or"
- " 130, line 17 for "members" read "member"
- " 133, para 6, line 4, for "on claims to," read "or claims to"
- " 134, para 10, line 2 for "sentenced" read "sentence"
- " 183, line 7 for "of poison" read "poison of"
- " 183, " 22, for "has" read "have"
- " 188, " 19, for "Septembder" read "September"
- " 183, " 34, for "perpretators" read "perpetrators"
- " 201, para 3, line 6, for "the quote" read "quote the"

Page 56, substitute the following for section 23

* 23 (1) Whoever keeps in his possession a press for the printing of books or papers without making a deposit under section 3 or section 5, when required so to do, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4 of the Press and Registration of Books Act, 1867

(2) Whoever publishes any newspaper without making a deposit under section 8 or section 10, when required so to do, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Press and Registration of Books Act, 1867

LAW OF PRESS AND SEDITION.

Press and Registration of Books Act No. xxv of 1876.

[22nd March 1867]

An Act for the regulation of printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books [As amended by Act X of 1890 and Acts III and X of 1911]

Whereas it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of copies of every book printed or lithographed in British India, and for the registration of such books ; It is hereby enacted as follows —

PART I —PRELIMINARY

In this Act, unless there shall be something repugnant in the subject or context,—
Interpretation clause

“book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or

lithographed

“British India” means the territories which are or shall be vested in Her Majesty or Her Successors by the Statute 21 and 22 Vict, cap. 106 (*An Act for the better Government of India*)

“Magistrate” means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police

* * *

And in every part of British India to which this Act shall extend, “Local Government” shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

2 [*Repeal of Act XI of 1835*] *Rep Act XIV of 1870*

PART II —OF PRINTING-PRESSES AND NEWSPAPERS

3 Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) [the name] of the publisher and the place of publication

The accused caused to be printed copies of certain books which were previously printed at the Government Press, Allahabad, and offered them for sale Some of the books

did not contain the name of the printer and the place of printing or the name of the publisher and the place of publication. Other books had printed upon them the words "Government Press, Allahabad." Held, that in respect of the former set of books, the accused was properly convicted under section 12 of Act XXV of 1867, for, a man who causes a book to be printed and offers it to the public for sale is a publisher, within the meaning of sections 3 and 12, that in respect of the latter set of books the accused was guilty of an offence under section 12. A W N 1887, 95

A newspaper was printed and published bearing the following words, "Printed and published at Cochin for the Malabar Economic Company at the Company's (Indico-Vincent Press)." Held that these words did not satisfy the requirements of Act XXV of 1867. Queen Empress v Hari Shenoy, 16 Mad 113

The word "publisher" has been used in the Printing Presses and Newspapers Act (XXV of 1867) in the restricted sense and does not include a person who merely sells a book or a paper. Queen Empress v Banka Patm 23 Cal 114

Held that the rule in section 3 of Act XXV of 1867 requires that every paper printed and published in British India shall have legibly printed on it the name of the printer and the place of printing and the name of the publisher and place of publication as such. An omission to comply with section 3 is punishable under section 12—Sections 3 and 4 do not deal with intention. Printers and publishers cannot be allowed to select for themselves the description to be used in professing to comply with the Act, but they must use the descriptions prescribed by the Act. The Crown v Bhawan Dass P R 1909, 5 Cr

4. No person shall, within British India, keep in his possession any
Keeper of printing press to press for the printing of books or papers, who
make declaration shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be --

"I, A B, declare that I have a press for printing at--

And this last blank shall be filled up with a true and precise description of the place where such press may be situate

(1) The accused had made a declaration, under s. 4 of the Act that he was the owner of a press called the "Atmaram Press." The management of the press was carried on by another person who looked after the whole concern. At this press was printed a bulky book which purported to be one devoted to metaphysics and philosophy and was styled "Ekishloki Gita." It was a book that dealt to a large extent with metaphysics, philosophy and religion. It also contained seditious matter scattered among discussions of religious matters. The accused took no part in the management of the press, nor did it appear that he had read the book or acquainted himself with the nature of it. He was charged with the offence made punishable under s. 124A, Penal Code, and convicted of the same. Held (1) that the cumulative effects of the surrounding circumstances was such as to make it probable that the accused had not read the book or that he had known its seditious object, and that the evidence having thus been evenly balanced and equivocal, reason in doubt arose as to the guilt of the accused, the benefit of which must be given to him, (2) that it was impossible to convict the accused under section 124A, Penal Code unless it was found that he had an intention of exciting disaffection, and that the evidence fell very far short of proving the intention. A declaration made under s. 4 of the Press Act, 1867 intended by the legislature to have certain effect, namely, that of fastening responsibility for the conduct of the press on the person declaring in respect of matters where public interests are involved. Therefore, when a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive, it is not one of law but of fact, and it is open to the accused to rebut it. Emperor v Shankar Shrikrishna Dev 35 Bom 55

(2) Where an accused person convicted on a summary trial of an offence under s. 1 had removed his press, as to which he had made the declaration under s. 4, from the premises, in which it was originally kept, to another building, and had not made a fresh declaration under s. 5 as to the new premises, on the ground that no fresh declaration was necessary

Hell, that the offence was not triable summarily, and that where the new place of business is within the same local jurisdiction as the former place, a fresh declaration was unnecessary.

Bawa Narain Singh v The Empress

P R 1889 Cr 9

5 No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down,
 Rules as to publication of printed periodicals containing public news

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe in duplicate the following declaration,

"I, A B declare that I am the printer, [or publisher, or printer and publisher] of the periodical work entitled—and printed [or published, or printed and published, as the case may be] at—"

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary

(See note (2) to section 4)

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary

(1) In the *Kesari* case, 22 Bom. 112 Starchey, J, observed that "in the absence of any evidence to the contrary, you will be justified in holding that the prisoner Tilak was the publisher of every article and every word in the *Kesari*."

(2) The intention of the Act was to constitute the declarations made by a person that he was the printer and publisher of a newspaper into *prima facie* evidence of publication and to throw on the accused the burden of showing that the actual publisher of the libel was not the person mentioned in the declaration. The presumption could be rebutted if such person showed that he entrusted in good faith the temporary management of the newspaper to a competent person during his absence, and that the libel was published without his authority, knowledge or consent.

Ram Isam V Lokmananda

9 Mad 387

6 Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or [other principal Civil Court of original jurisdiction for the place where] the said declaration shall have been made.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

7 In any legal proceeding whatever, as well civil as criminal, the Office copy of declaration to be *prima facie* evidence production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof title shall correspond with the title of the periodical work mentioned in the declaration

(1) A declaration made under section 5 may be withdrawn under this section by means of a fresh declaration See also *Emperor v Bhaskar* (8 Bom L R 421) Q R, *v Vinayak* (2, Bom L R, 286) *Surendra Prasad Lahiri v Emperor* (138, Cal 227), *Joy Chandra Sarkar v Emperor v Rungpur Bartabaha* (138, Cal 421), *Emperor, v Snkrishan Dey*, (35 Bombay 59) and section 7 of Act VII of 1908

(2) A person who subscribes the declaration must be presumed, under this section, to be cognisant of all that he was printing and publishing and, in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid

Apurba Krishna Bose, v, Emperor

35 Cal, 141

(3) This section makes the printer or publisher responsible for whatever may appear in a newspaper, whoever the writer of the article may be and, therefore, a prosecution may proceed against the printer, unless he can prove absence from the newspaper office in good faith and without knowledge that the seditious articles would be published during his absence But it is not absence in good faith for a printer, to go away knowing very well what is going to happen in his absence and for the purpose of shirking his liability

Emperor v Phanendra Nath Mitter,

35 Cal 945

(4) The registered printer of a paper, so long as he continues such printer cannot escape from criminal liability for publication therein, or a seditious article, by plea that he was temporarily absent from the station when the article was printed, or that he was ignorant of the contents thereof, or that he had no intention of committing any offence

Ram Nath v King Emperor

P R 1915, Cr 1

8 Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration —

“ I, A B, declare that I have ceased to be the printer [or publisher or printer and publisher] of periodical work entitled—— ”

Each original of the latter declaration shall be authenticated by signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy attested as is aforesaid, of the latter declaration, and the former

declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned

PART III—DELIVERY OF BOOKS

9 Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say —

Copies of books printed after commencement of Act to be delivered gratis to Government

- (a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,
- (b) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies of not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct, the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid

Nothing in the former part of this section shall apply to—

(a) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book-prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(ii) any periodical work published in conformity with the rules laid down in section 5 of this Act

10 The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

11 The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine. Any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India or to the British Museum and the said Secretary of State, as the case may be.

Receipt for copies delivered under section 9

Disposal of copies delivered under section 9

PART VI—PENALTIES,

12 Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both

13 Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both

14 Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years

15 Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both

16 If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints, or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher, or other person ought to have supplied.

17 Any sum forfeited to the Government under the last foregoing section may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

PART V —REGISTRATION OF BOOKS

18 There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered [pursuant to clause (a) of the first paragraph of section 9] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say).—

- (1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language
- (2) the language in which the book is written
- (3) the name of the author, translator or editor of the book or any part thereof
- (4) the subject
- (5) the place of printing and the place of publication,
- (6) the name or firm of the printer and the name or firm of the publisher
- (7) the date of issue from the press or of the publication.
- (8) the number of sheets, leaves or pages
- (9) the size
- (10) the first, second or other number of the edition
- (11) the number of copies of which the edition consists:
- (12) whether the book is printed or lithographed
- (13) the price at which the book is sold to the public and
- (14) the name and residence of the proprietor of the copyright or of any portion of such copyright

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the [copy thereof pursuant to clause (a) of the first paragraph of section 9]

[Effect of Registration]

Repealed Act III of 1914

19 The memoranda registered during each quarter in the said Catalogue shall be published in the Local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the Government of India, respectively

PART VI — MISCELLANEOUS

20 The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules

All such rules and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette

21 The Governor General of India in Council may, by notification in the Gazette of India, exclude any class of books from the operation of the whole or any part or parts of this Act

22 [*Continuance of parts of Act*] *Rep. Act X of 1890, s. 7*

23 [*Commencement*] *Rep. Act XIV of 1870*

Statement of Objects and Reasons published with the Dramatic Performances Bill

The primary object of this Bill is to empower the Government to prohibit Native plays which are scandalous, defamatory, seditious or obscene. The necessity for some such measure has been established by the recent performance in Calcutta of a scurrilous Bengali drama, to prevent which the existing law was found to be insufficient.

The Bill, first empowers the Government or such officer as it empowers in this behalf, to issue an order prohibiting any dramatic performance which, in the opinion of the Government, comes within any of the classes above mentioned. The order may be served on intending performers or on the owner of the place in which the play takes place. The order may also be notified by proclamation, and penalties are provided for disobedience thereto.

Power is then given to the Magistrate to grant warrants to the Police to enter, arrest and seize scenery, dresses &c.

Lastly, the Local Government is empowered to order, in specified localities, that no play shall be performed in any place of public entertainment, except under a license from Government and that a copy of the piece, if written, or a sufficient account of its purport, if it be in pantomime, shall be previously furnished to the proper authorities.

Calcutta, 9th March 1876.

(Sd) A HOBHOUSE

DRAMATIC PERFORMANCES ACT, XIX OF 1876,

(AS AMENDED BY ACTS IV AND X OF 1914)

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL

(*Received the assent of the Governor-General on the 16th December 1876*)

An Act for the better control of public dramatic performances

Whereas it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene, It is hereby enacted as follows :—

Short title,

1. This Act may be called "The Dramatic Performances Act, 1876"

DRAMATIC PERFORMANCES ACT

Local extent It extends to the whole of British India.

2 In this Act "Magistrate" means in the Presidency Towns
Magistrate defined. Magistrate of Police, and elsewhere the Magistrate of the District

3 Whenever the Local Government is of opinion that any play
Power to prohibit certain dramatic performances pantomime, or other drama performed or about to be performed in a public place is—

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government established by law in British India, or

(c) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency Towns and Rangoon the Local Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance

Explanation—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section.

4 A copy of any such order may be served on any person about to
Power to serve order of prohibition take part in the performance so prohibited or on the owner or occupier of any house, room or place in which such performance is intended to take place, and any person on whom such copy is served, and who does or willingly permits, any act in disobedience to such order shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both

5 Any such order may be notified by proclamation, and a written or
Power to notify order printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited

Penalty for disobeying prohibition 6 Whoever, after the notification of any such order—

(a) takes part in the performance prohibited thereby, or in any performance substantially the same as the performance so prohibited, or

(b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(d) being the owner or occupier, or having the use of, any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine or with both

7 For the purpose of ascertaining the character of any intended public
Power to call for information dramatic performance, the Local Government or such officer as it may specially empower in

this behalf may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code

8 If any Magistrate has reason to believe that any house, room or place is used, or is about to be used for any performance prohibited under this Act, he may by his warrant, authorize any officer of police to enter with such assistance as may be requisite, by night or by day, and by force if necessary, any such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses, and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance

Saving for prosecutions under Penal Code, sections 124A and 294

9 No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code

10 Whenever it appears to the Local Government that the provisions of this section are required in any local area, it may, by notification in the local official Gazette, that such provisions are applied to such area from a day to be fixed in the notification

Power to prohibit dramatic performances in any local area except under license

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Local Government, or such officer as it may especially empower in this behalf

The Local Government may also order that no dramatic performance shall take place in any place of public entertainment within such area unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime has been furnished, not less than three days before the performance, to the Local Government, or to such officer as it may appoint in that behalf

A copy of any order under this section may be served on any keeper of a place of public entertainment, and if thereafter he does, or willingly permits, any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both

11 The powers conferred by this Act on the Local Government may be exercised also by the Governor-General in Council

Exclusion of performances at religious festivals

12 Nothing in this Act applies to any *jathras* or performances of a like kind at religious festivals

STATEMENT OF OBJECTS AND REASONS.

The Indian Penal Code was enacted in 1860 under the powers conferred by s 43 of the Government of India Act, 1833 (3 and 4 Will 4, c. 85)—see *Reg v Elmstone* (1878), 7 Bom Cr Ca at p 100

2 Since that date Parliament has bestowed on the Indian Legislature various powers of legislating for extra-territorial offences, but no corresponding amendment has been made in the Indian Penal Code. To a large, but not to the full extent, those powers have been taken advantage of by s 8 of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879). It seems desirable that the Code itself should specify the extent of its extra-territorial operation. At present this is done only in fragmentary and misleading manner, and as something more than mere consolidation is required, the present Bill has been prepared. It is proposed eventually to consolidate the various enactments which have from time to time been passed to amend the Code, but it is better to keep amendment distinct from consolidation.

3. The English theory of territoriality of crime is purely a doctrine of the common law and probably owes its origin to the old rules on criminal pleading. It is not accepted by other nations—see Hall's *International Law*, Ed 3 p 206, and the judgment of West, J, in *Reg v Moojia Chetty* (1881), 1 L R 5 Bom at p 362. Having regard to the circumstances of India, Parliament has departed from English rule, and has authorised the Indian Legislature to deal in certain cases with extra-territorial offences. It seems right that these powers should be exercised to their full extent, and the present Bill will effect that object. Even then certain anomalies will remain, but they can be removed only by further Parliamentary legislation.

NOTES ON CLAUSES

Clause 2—This clause proposes to repeal s 4 of the Code and to substitute a new section therefor.

Clause (1) of the new section follows the words of s I of the Indian Councils Act, 1869 (32 and 33 Vic, c 98) and corresponds with s 8 (1) of the Foreign Jurisdiction and Extradition Act, 1879, (XXI of 1879).

Clause (2) follows the words of s. 1 of the Government of India Act, 1865 (28 and 29 Vic, c 71), by using the term "British subject," and will extend the operation of s 8 (2) of Act XXI of 1879, which applies only to *European* British subjects. There are many British subjects who are neither European British subjects as defined by the Act, nor Native Indian subjects, *e.g.* Cingalese, Tasmanians and inhabitants of the Straits Settlements.

As regards clause (3), by s 22 of the Indian Councils Act, 1861, (24 and 25 Vic, c 67), the Indian Legislature is empowered to legislate for "all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty." By s 4 of the Indian Penal Code the provisions of the Code are extended to every *servant of the Queen* "within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into

with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India." Neither the Indian Act nor the English Statute draws any distinction between Government servants who are British subjects and those who are not. The words "whether a British subject or not," have therefore been inserted in the Bill to negative the decision in *Empress v Natwarai*, (1891), I L R 16 Bom 178, where it was held that a servant of Government who was the subject of a Native State, could not be tried in British India for an offence committed outside. The necessary consequential amendments will be made in the Code of Criminal Procedure.

The expression "India" is defined by s 3 (27) of the General Clauses Act, 1897 (X of 1897), and coincides with the definition given by the Interpretation Act, 1889 (52 and 53 Vict., c 63).

Clause 3—This clause is intended to carry out a suggestion of the Bombay Government consequent on a decision of the Bombay High Court to the effect that a person in British India who instigated a Portuguese to commit a murder in Goa, was guilty of no offence—see *Queen Empress v Gnnpatrao* (1894), I L R 12 Bom 105. Presumably, if the murderer had been a Native Indian subject, the present law would have reached him, but the point was not discussed. The Indian Legislature has power to legislate for all persons in British India, and there is no reason why British India, should be an Alsatia for the instigators of crime.

The 7th October, 1897

M. D CHALMERS.

The following report of the Select Committee on the Bill to amend the Indian Penal Code in relation to Extra-territorial offences was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 4th February 1898 —

We the undersigned, Members of the Select Committee to which the Bill to amend the Indian Penal Code in relation to Extra-territorial offences was referred, have considered the Bill with the further amendments in the Penal Code given notice of at the meeting of Council held on the 21st December, 1897, and the papers* noted in the list appended, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2 *Clause 2*—We have altered *Illustration (b)* to this clause by making it apply to a Native State in India. We think it is unsafe to attempt to define the status of tribal territory in an *illustration*.

3. *Clause 4*—We have carefully considered the new clause proposed by the Government, and we have inserted it in the Bill with the following amendments —

- (a) For the expression "the Government" we have substituted the phrase "the Government established by law in British India." This restores the language of the Act 1870. Having regard to the terms of section 17 of the Indian Penal Code, which defines "Government" the omission of the words "established by law in British India" might be held to give an extended meaning to the term "Government," whereas it ought to have exactly the same meaning as in the Act of 1870.

* Not printed.

- (b) We have altered the term of imprisonment from ten years to three, thus restoring the law of 1870. The term of ten years is provided as an alternative for transportation in sections 121A, and 122, but apparently the framers of the Act of 1870, in section 124A, wished to draw a marked distinction between minor offences and offences of a very serious character where transportation would be the only appropriate punishment,
- (c) We have omitted the words "or promotes or attempts to promote feelings of enmity or ill-will between different classes of Her Majesty's subjects" and have framed a new clause to deal with the offence thereby indicated. It appears to us that the offence of stirring up class hatred differs in many important respects from the offence of sedition against the State. It comes more appropriately in the Chapter relating to offences against the public tranquillity. The offence only affects the Government or the State indirectly, and the essence of the offence is that it predisposes classes of the people to action which may disturb the public tranquillity. The fact that this offence is punishable in England as seditious libel is probably due to historical causes, and has nothing to do with logical arrangements.
- (d) We have omitted the words "or ill-will" at the conclusion of *explanation 1*. The expression "all feelings of ill-will" appears to us to be too wide and vague. It is only when feelings of ill-will amount to disloyalty or enmity that they constitute such disaffection as is contemplated by the clause. A certain amount of ill-will may be compatible with genuine loyalty.
- (e) We have added *explanation 3* to make it clear that criticism on the action of Government is not confined to cases in which it is sought to bring about an alteration of what has been done. For example, suppose the Government make an appointment which is considered objectionable. That appointment may be criticised, although the criticism may not have in view the cancellation of the appointment. We have made consequential amendments in *explanation 2* to make the language of the *explanations* uniform.

4 *Clause 5* ---The object of framing this clause has already been detailed. In framing it we have altered the words "enmity or ill-will" into "enmity or hatred," and we have fixed the maximum punishment at two years' imprisonment.

We recommended that the clause when passed should be included in section 196 of the Code of Criminal Procedure, so that offences under it should only be prosecuted under the authority or with the sanction of the Government.

5 *Clause 6* ---We have inserted the clause proposed by the Government, but we have altered and enlarged the scope of the *exception* to the clause. No doubt the statements, rumours and reports referred to are of

a highly mischievous character, but, having regard to the conditions under which modern journalism and the discussion of public questions are necessarily carried on, we think that, when the statement, rumour or report is published without any criminal intent, it is going too far to require the person who published it to prove its actual truth. To require such proof might be throwing an impossible burden upon him, and it should be sufficient for him to show that he had reasonable grounds for believing it, as, for instance, by showing that he made due inquiry before he published it.

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7. We do not think that either the original provisions of the Bill as introduced or the further amendments in the Penal Code above referred to have been so altered as to require republication, and we recommend that the Bill be passed as now amended

D. M. Chalmers, R. M. Rivaz, C. C. Stevens, H. E. M. James, P.
Ananda Charlu, * G. H. P. Evans, † Lakshmishwar Singh †
The 31st January 1898

* I sign subject to the objections embodied in my minute of dissent

† I think the words "tending to the disturbance of public tranquillity" or word to that effect might be advantageously inserted in section 153 A

‡ Note of dissent appended

So far as I know, there never has been any serious doubt expressed as to the true meaning of section 124 A now in the Penal Code. No difficulty could arise except upon the view that the explanation attached to the section cannot be read along with it as virtually defining the term "disaffection." It has thus become urgent to remove the difficulty interposed by that view. This is best met by throwing the substance of the *explanation* into the form of a definition as follows:—

"Feelings of disaffection mean all feelings incompatible with a disposition to render obedience to the lawful authority of the Government established by law in British India and to support the lawful authority thereof against unlawful attempts to subvert or resist that authority."

This, which has come from the Defence Association, I suggested in the Committee and the majority were against me. By adding to such a definition proviso such as Mr Stephen has made part of his section 102 in his "Draft Code," the law will, in my judgment be elucidated far better than by the proposed explanation, which I am for omitting as a necessary consequence.

The proposed words "hatred, contempt and enmity" are, in my opinion, the very worst that could be chosen. Standing by themselves, they are, in the last degree, vague, misleading and obscure. By giving room for no small amount of fanciful speculation, they cannot fail to prove most harmful to public interests by spreading a sense of uncertainty and *virtually* stifling all *frank* discussion of public questions. I would therefore score out, from the clause now proposed, the words "to bring or attempt to bring into hatred or contempt or." I may also point out that the definition I have recommended would be wide enough to cover all forms of real *political* hatred, which should be penalised. I very much doubt whether what is proposed in the Bill as contained in these objected words is good or sound law at the present day.

I am for eliminating the penalty of transportation from the section. A study of the history of this section shews how it is a mistake in the section and how the Law Commissioners, who sat on the Original Draft Penal Code, criticised it in strong terms. The danger of retaining it has been already once exemplified, and may be, any day, exemplified again and again. The danger lies in its being viewed—as it is too sure to be by not a few—as the maximum, permissible in all cases except where extenuating circumstances or other grounds for leniency exist.

I am opposed to the proposed clause 153 A, as a dangerous piece of legislation and as being impolitic (among other reasons) by necessitating Government to side with, or to appear to side with, one party as against another. In my humble judgment it will only accentuate the evil which it is meant to remove. Far from healing the differences which still linger, or which now and then come to the surface, it would widen the gap by encouraging insidious men to do mischief in stealth, with the sure hope that the Government would come down on such as openly resented. It would have all the repressive effects which the proposed amendments on 124A cannot fail to have, much to the detriment of undoubted rights and useful work.

In clause 505, as proposed to be altered, I would omit the words “or which is likely to cause” from each of (a), (b) and (c) and substitute the words “and thereby to induce any person” for the words “whereby any person may be induced” in (b). Intent being in this, as in 124A, the essence of the offence, the words which I have objected to must of necessity introduce a world of confusion which might be easily illustrated. They are bound to operate prejudicially to public good. It is perhaps necessary to add, with reference to clause 153A and the changes in 505, that, where is the prior sanction of Government which is prescribed will be something of a guarantee, it will mostly depend on the strength with which the case is urged by the District officer, for I hear that, in the face of a strong representation by the latter, the Government would, naturally and perhaps not improperly, hesitate to take upon itself the responsibility of withholding sanction. The mischief of these sections lies not so much in the natural results which will follow, as in the unnatural and exaggerated dread they would undesirably inspire in most cases. In such a result the balance of advantage will not be on the side of the public.

The 31st January

P ANANDA CHARLU.

I sign the report subject to the following observations —

1. I think that, in accordance with the opinion of the majority of the Judges of the Calcutta High Court, it should be clearly stated in section 124A that the intention to produce the effect mentioned therein is the basis of the offence. A similar alteration should be made in *explanation* 2, and after the words “by lawful means” the words “or for the purpose merely of showing that they are erroneous but” should be inserted, and after the word “without” the words “the intention of” should be added. As the High Court has pointed out, comments made for such a purpose and without the *intention* of exciting hatred or disaffection are legitimate and allowable. Criminal intent is the essence of the law of sedition as it prevails in England. It should be made quite clear that in all prosecutions under sections 124A, 153A and 505, the onus shall

he on the prosecution to prove the intention in the mind of the accused at the time, or at all events to adduce such evidence as to enable the Court reasonably to infer the same from his acts. In this as in all other penal cases the accused is entitled to demand that his guilt shall be fully proved against him by the prosecution beyond all reasonable doubt. I submit that this class of prosecutions should not be exceptionally dealt with, but that they should be called upon to discharge the duties which ordinarily belong to all prosecutions in criminal cases, *viz.*, that the burden of proving the offence lies on them.

2 Having regard to the language of *explanation 1* and to recent judicial rulings on the meaning of "disaffection" it seems to me that the words "brings or attempts to bring into hatred or contempt or" are superfluous and may lead to unnecessary difficulties. As regards "hatred" I must confess that I am no better able than is Worcester's Dictionary to distinguish between the meaning of that word and "enmity," the term which is employed in *explanation 1*. As regards "contempt" the idea conveyed by that word seems to be fully covered by the rest of the section, unless indeed it is desired to give so dangerous an extension to the scope of the section as will enable Government to prosecute to a conviction persons responsible for those cartoons, skits or other comic productions with which newspapers and other periodicals not infrequently try to enliven their readers.

3 I think further that the definition of "disaffection" in *explanation 1* to section 124A is far too vague, and would recommend the adoption in its place of some such definition as that suggested by the European and Anglo-Indian Defence Association. I quote it here for the sake of convenience—"Feelings of disaffection means all feelings incompatible with a disposition to render obedience to the lawful authority of the Government established by law in British India and to support the lawful authority thereof against unlawful attempts to subvert or resist that authority."

4 The remarks I have made in paragraph 1 with regard to the importance of making the intention the basis of the offence contemplated by section 124A apply equally to the offence contemplated by the new section 153A. It should be clearly stated in the section that *mens rea* is an essential ingredient of the offence under section 153A.

5 Both sections 153A and section 505 when passed should be included in section 196 of the Code of Criminal Procedure, so that offenders under them should be prosecuted only under the authority and with the sanction of the Local Government.

6 There is one more point with regard to section 124-A which has, I think, been overlooked and which to my mind is of great importance. The section as it stands is far too comprehensive. It appears to me that some attempt should be made to restrict the discretion of Judges in inflicting punishment. For instance, under the proposed section it is quite possible to punish a journalist or a public speaker who is only guilty of using indiscreet language calculated at most to give rise to trifling feelings of irritation. Surely such action on the part of the journalist or the public speaker ought not to be considered as a penal offence. I think there should be some differentiation between the punishment allotted for acts like those mentioned above and for intentional acts of sedition.

31st January, 1898.

LAKSHMISHWAR SINGH.

ACT NO. IV OF 1898
An Act to amend the Indian Penal Code

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.
(18th February, 1898)

Whereas it is expedient to amend the Indian Penal Code, It is hereby enacted as follows —

1 (1) This Act may be called the Indian Penal Code Amendment Act,
Short title and commence 1898, and
ment

(2) It shall come into force at once

2 Section 4 of the Indian Penal Code is hereby repealed, and the
Substitution of new section following section is substituted therefor,
for section 4, Act XLV, 1860 namely —

“ 4 The provisions of this Code apply also to any offence committed
Extension of Code to extra by—
territorial offences

(1) any Native Indian subject of Her Majesty in any place without and beyond British India,

(2) any other British subject within the territories of any Native Prince or Chief in India,

(3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India

Explanation—In this section the word ‘ offence ’ includes every act committed outside British India which, if committed in British India, would be punishable under this Code

Illustrations

(a) A, a coolee, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found

(b) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found

(c) C, a foreigner who is in the service of the Punjab Government, commits a murder in Jind. He can be tried and convicted of murder at any place in British India in which he may be found

(d) D, a British subject living in Indore, instigates E to commit a murder in Bombay. Disguity of abetting murder

Insertion of new section 3 After section 108 of the Indian Penal Code
after section 108, Act XLV, the following section shall be added, namely —
1860.

“ 108-A A person abets an offence within the meaning of this Code who,
Abetment in British India in British India, abets the commission of any
of offences outside it act without and beyond British India which
would constitute an offence if committed in British India

Illustration

A in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder

Substitution of new section 4 Section 124-A of the Indian Penal Code
for section 124 A Act XLV, is hereby repealed, and the following section
1860 is substituted therefor, namely —

“ 124-A Whoever by words, either spoken or written, or by signs or
Sedition, by visible representation, or otherwise, brings
or attempts to bring into hatred or contempt, or
excites or attempts to excite disaffection towards Her Majesty or the

Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine

Explanation 1.—The expression ‘disaffection’ includes disloyalty and all feelings of enmity

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section

5 After section 153 of the Indian Penal Code the following section shall be inserted, namely —

“153-A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty’s subjects shall be punished with imprisonment which may extend to two years, or with fine, or with both

Explanation —It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty’s subjects”

6 Section 505 of the Indian Penal Code is hereby repealed and the following section is substituted therefor, namely —

“505 Whoever makes, publishes or circulates any statement, rumour or report —

- (a) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the army or navy of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such, or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity, or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both

Exception —It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid

EXTRACTS FROM SCHEDULE II, (TABULAR STATEMENT OF OFFENCES) 19
OF THE CODE OF CRIMINAL PROCEDURE, 1898

Section	Offence.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code	By what Court triable
121 A	Conspiring to commit certain offences against the State	Shall not arrest without warrant	Warrant	Not bailable	Not compoundable	Transportation for life or any shorter term or imprisonment of either description for ten years	Court of Session
124 A	Sedition	Do	Do	Do	Do	Transportation for life or for any term, or imprisonment of either description for 3 years and fine or fine	Court of Sessions Chief Presidency Magistrate or District Magistrate or Magistrate of the first class specially empowered by the local Government in that behalf
153-A	Promoting enmity between classes	Do	Do	Do	Do	Imprisonment of either description for 2 years or fine, or both	Presidency Magistrate or Magistrate of the first class

CASES OF SEDITION

(1) Queen Empress V Jogendra Chandra Bose (generally known as the *Bangabasi* case) was instituted in 1891, and is reported in 19 Cal 35 "Disaffection" and "disapprobation" explained and s 124 A referred to and explained to the Jury. The Jury were unable to return a unanimous verdict. They were discharged and a retrial was ordered. In the meantime the accused having tendered an apology, the case was dropped.

(2) The accused, who was the editor, proprietor, and publisher of the Kesari newspaper, was charged under section 124-A of the Penal Code (Act XLV of 1860) with exciting and attempting to excite feelings of disaffection to Government by the publication of certain articles, etc., in the Kesari in its issue of the 15th June, 1897. At the trial an order for the

prosecution by Government under Section 196 of the Criminal Procedure Code (Act X of 1882) in the following form, dated July 26th, 1897, was tendered in evidence

"Under the provisions of Section 196 of the Code of Criminal Procedure, Mirza Abas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr Bal Gangadhar Tilak, B.A., L.L.B., of Poona, publisher, proprietor and editor of the Kesari, a weekly vernacular newspaper of Poona, and against Mr Hari Narayan Gokhale, of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under Section 124-A of the Indian Penal Code and any other section of the said Code which may be found to be applicable to the case"

Counsel for the accused objected that the order was too vague and should have specified the articles with reference to which the accused was to be charged. *Held* that the order was sufficient and was admissible, but that if it were not sufficient, the commitment might be accepted and the trial proceeded with under section 532 of the Code of Criminal Procedure *Queen Empress v Morton* (1) followed. In order to show the intention of such publications, counsel for the prosecution tendered in evidence certain letters signed "Ganesh" which appeared in the issue of Kesari of May 4, 1897. Objection was taken that it was not admissible, inasmuch as letters to newspapers often express opinions which are not the opinions of the editor and publisher. *Held* that the letter was admissible to show intention and animus. The proceedings in the Legislative Council which resulted in the passing of an Act cannot be referred to as aids to the construction of that Act. *Administrator General of Bengal v Premial Mullick* followed.

Section 124 A of the Penal Code (Act XLV of 1860) explained. Meaning of the word "disaffection." At the close of the Judge's charge to the Jury, Counsel for the first accused asked that the following points might be reserved for the decision of the Court under Section 434 of the Criminal Procedure Code (Act X of 1882), viz—

Whether the order for the prosecution was sufficient under Section 196 of the Criminal Procedure Code. 2 Whether the High Court had power, in the absence of a sufficient order, to accept the commitment of the accused under Section 532 of the Criminal Procedure Code and to proceed with the trial. 3 Whether the meaning given to the term "disaffection" by the Judge in his charge to the Jury was correct. The Judge declined to reserve the above points. The first accused having been convicted applied to a Full Bench under clause 41 of the Amended Letters Patent, 1865, for a certificate that the case was a fit one for appeal to the Privy Council. The points upon which he desired to appeal were those which his counsel at the close of the trial asked the Judge to reserve as above stated. The Full Bench refused to grant the certificate. *Queen Empress v Bal Gangadhar Tilak* (Kesari Case) 22 Bom 112

(3) The word "disaffection" in section 124-A of the Indian Penal Code (Act XLV of 1860) is used in a special sense as meaning political alienation or discontent, a spirit of disloyalty to the Government or existing authority. An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce political hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance. This meaning of the word "disaffection" in the main portion of the section is not varied by the explanation. *Per Parsons, J*—The word "disaffection" used in Section 124 A of the Indian Penal Code cannot be construed as meaning an absence of or the contrary of affection or love, that is to say, dislike or hatred, but is used in its special sense as signifying political alienation or discontent, that is to say, feeling of disloyalty to the existing Government, which tends to a disposition not to obey, but to resist and subvert the Government. *Per Ramade, J*— "Disaffection" is not a mere absence or negation of love or good will, but a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people and weaken the bond of allegiance and prepossesses the minds of the people with avowed or secret animosity to Government,—a feeling which tends to bring the Government into hatred or contempt by imputing base and corrupt motives to it, and makes them indisposed to obey or support the laws of the realm, and which promotes discontent and public disorder.

Queen Empress v. Ram Chandra Narayan and another (Pratod case) 22 Bombay, 152.

(4) Meaning of the term "disaffection" explained. Any one who, by any of the means referred to in section 124 A of the Indian Penal Code excites or attempts to excite feelings of hatred, dislike, ill-will, enmity, or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection" as that term is used in section 124 A. Such feelings are necessarily inconsistent with, and incompatible with a disposition to render obedience to the lawful authority of Government and to support the Government against unlawful attempts to subvert or resist it. The term "disaffection" may be taken as synonymous with "disloyalty." The ordinary meaning of the term "disaffection" as used in section 124 A is not varied by the explanation appended to that section. When a person is charged with having committed the

offence punishable under section 124A of the Penal Code, his intention may be inferred from one particular speech, article, or letter, or from that speech, article or letter, considered in conjunction with what such person has said, written or published on another or other occasions. Where it is ascertained that the intention of such person was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written or published could have the effect of exciting such feelings of disaffection and it is immaterial whether the words were true or were false, and, except on the question of punishment or in a case in which the speaker, writer, or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words in fact excite such feelings of disaffection.

Queen Empress v Amba Parshad

20 All 55

(5) Orders under section 196 of the Criminal Procedure Code should be expressed with sufficient particularity and with strict adherence to the language of the section. But the real question in such cases is whether the prosecution was instituted under the authority of Government. An order purported to accord sanction to prosecute the editor, manager and the printer of a newspaper under section 124 A of the Indian Penal Code without specifying their names, and containing a misdescription of the seditious article. A police officer received it from the Commissioner of Police, and under his directions applied for and obtained warrants from the Chief Presidency Magistrate against the accused. He was examined by the Magistrate, but not on oath, and his deposition was not recorded. On the day of the trial the same police officer filed an amended order under section 196 of the Criminal Procedure Code correcting the error in the name of the article in the previous orders. Held (1) that the prosecution was regularly instituted. *Queen Empress v Bal Gangadhar Tilak*, 1 L R 22 Bombay 112, referred to *Kali Kinkar Selt v Nrvya Gopal Roy*, 1 L R 32 Calcutta 469, and *Reg v Judith*, 37 W R 143, distinguished. (ii) That the order under section 196 of the Criminal Procedure Code was not a "complaint" within section 4 (h), but that the application of the police officer for warrant in respect of an offence under section 124-A of the Indian Penal Code, coupled with his oral allegations though not made on oath nor recorded, amounted to a "complaint." *Queen Empress v Sham Lal* 1 L R, 14 Calcutta 707 followed. (iii) That the presumption under section 114 of the Evidence Act supplied any omissions either as to the method of the communication of the order to the prosecuting officer, or in the order sheet of the Magistrate. (iv) The article in question was incompatible with the continuance of the Government established by law and was seditious. It is the duty of every citizen to support the Government established by law and to express with moderation any disapprobation he may feel of its acts and measures. (v) That the republication of seditious articles from another newspaper, one of which only was filed as an exhibit by the prosecution and used and the case against the editor of that paper on his trial for sedition, was not a report of the proceedings of a Court of Justice, and was not justifiable under the circumstances. (vi) That the presumption contained in section 7 of Act XXV of 1867, in the absence of evidence to the contrary, rendered the printer liable for seditious matters published in his paper.

Apurba Krishna Bose v Emperor (1907)

35 Cal 141

(6) Laxman who was sub editor of the Gurakhi newspaper published in Bombay was unanimously found guilty by the Jury under section 124 A and sentenced to six months simple imprisonment. Vinayek who was the proprietor, editor, printer and publisher was found guilty by the Jury and was sentenced to twelve months simple imprisonment (1899) *Queen Empress v Laxman*, and *Queen Empress v Vinayek* (Gurakhi case)

Reported in 2 Bo L R, 286

(7) Bhaskar who was Editor and publisher of a Marathi Newspaper called *Bhala* was found guilty by the Jury and sentenced to six months simple imprisonment and a fine of one thousand rupees

Emperor v Bhaskar

Reported in 8 Bo L R 421

(8) The words "which has been used for the commission of any offence" refer to cases of the same nature i.e., to instruments like guns or swords produced in Court. A printing press cannot be said to have been used for the commission of sedition inasmuch as the offence consists in the publication and not the printing, the press being only a remote instrument

Abinas Chandra Bhattacharjee v Emperor (1907) (Yugantar case)

34 Cal 986

(9) The second Tilak trial took place in 1908. Bal Gangadhar Tilak was charged with having published in his newspaper *Kesari* a series of articles, he was tried in the Bombay High Court, was found guilty and sentenced to transportation for six years and a fine of Rs 1,000

Emperor v Bal Gangadhar Tilak

Reported in 10 Bom L R 848

The accused was charged with an offence punishable under s 124 A of the Indian Penal Code in respect of an article which he published in his newspaper (*Kesari*) and also with

offences punishable under Sections 124 A and 153 A of the Code with regard to another article which he published in the same newspaper. For all these offences he was tried at one trial, and was convicted and sentenced for each of them. *Held* that there was no irregularity on the ground of misjoinder of charges. Sections 234, 235, 236 and 239 of the Criminal Procedure Code, 1898, mentioned as exceptions in section 233 of the Code, are not mutually exclusive. If it had been intended that s 235 (2) or s 236 should not be made use of in co operation with s 234 this intention could have been easily expressed. If the exceptions are mutually exclusive, the provisions of s 236 or 237 could never be invoked to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under s 234. The Legislature could hardly have intended that a joint trial of three offences under s 234 of the Criminal Procedure Code, 1898, should prevent the prosecution from establishing at the same trial the minor and alternative degrees of criminality involved in the act complained of. Sections 233 (2) and 236 of the Criminal Procedure 1898, may be resorted to in framing additional charges where the trials of three offences of the same kind committed within the year. Before granting a certificate for leave to appeal to the Privy Council, the Court must be satisfied that there is reasonable ground for thinking that grave and substantial injustice may have been done by reason of some departure from the principles of natural justice.

In re Bal Gangadhar Tilak

33 Bom 221

(10) In the same year (1908) the case of Leakat Hossam Khan and Abdul Gaffur v Emperor came up on appeal before the High Court. The appellants were convicted by the Sessions Judge of Backergunge of sedition and abetment of sedition and sentenced, respectively, to three years rigorous imprisonment. It was held by the High Court that no distinct offence had been established under Section 153 A and the convictions under that section were set aside while those under Section 124 A, were affirmed.

App No 214 of 1908

(11) A reasonable criticism of the action of Government in a particular matter without any attempt to create hatred or contempt against it is not sedition, but an incitement to insurrection falls within the scope of s 124 A of the Penal Code. Seditious articles published in the same newspaper, not forming the subject of the charges, on which the prisoner is being tried at the time, are admissible to show the intention of the person, who printed or published the latter. S 7 of Act XXV of 1867 makes the printer or publisher responsible for everything appearing in the newspaper, whoever the author of the seditious articles may be, unless he can prove absence from the office of the paper in good faith and without knowledge that during his absence seditious matter would be published. It is not absence in good faith for the printer to go away, but with the full knowledge of what is going to happen in his absence and for the purpose of shirking his liability. *Queen Empress v Bal Gangadhar Tilak*, 1 L R 22 Bombay 112 dissented from. *Ramasami V Lokumadal* 1 L R 9 Madras 381 approved of. 35 Cal 945

Emperor v Phanendra Nath Mitter (1908)

(12) The accused *Ganesh Balwant Modak* was the manager of a newspaper selling agency called the Vartman Agency. This agency was the sole agent for sale in India of a fortnightly periodical styled "Swaraj" which was printed and published in London. One of the issues of the periodical contained an article entitled "the Aetiology of the Bomb in Bengal" which was charged as sedition within the meaning of section 124 A of the Indian Penal Code. It appeared that the accused received by post an advance copy of the issue of the periodical in question. He advertised the same and also reviewed it in a daily newspaper called the *Rashtra Mat*, which was published under his management. The sale copies of the issue were later on received by him by a steamer parcel and all of them were sold by the Vartman Agency. The accused was under these circumstances charged with having published the seditious article in India, an offence punishable under section 124 A of the Indian Penal Code, 1860. He was convicted of the offence and sentenced to suffer one month's simple imprisonment. The accused applied to the High Court. It is the settled practice of the High Court of Bombay to refuse to interfere, in the exercise of its revisional jurisdiction, in regard to findings of fact, except on very exceptional grounds such as misstatement of evidence by the lower Court, or by the placing by that Court of *onus* of proof on the accused contrary to the law of evidence. Under the Indian Penal Code, (XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents the perusal of the articles by the buyers or any other member of the public. The conviction and sentence confirmed.

Emperor v Ganesh Balwant Modak (The Swaraj case)

34 Bom 378

(13) The accused published a book containing 18 poems of which four were the subject matter of the charge. The general trend of the poems charged, as well as the remaining ones in the book, evinced a spirit of bloodthirstiness and murderous eagerness directed against Government, conveyed the urgency of taking up the sword, and made an appeal of blood thirsty incitement to the people to take up the sword for secret societies and adopt guerilla warfare for the purpose of rooting out the British rule. *Held* that the accused committed the offence of abetting the waging of war (section 121 of the Indian Penal Code) by the publication of the poems charged. *Held*, further that the Court was entitled to look into the poems other than those forming the subject matter of the charge, for the purpose of finding out the intention of the writer and the design of the publications. *Per* Chandelavarkar J. — Under the Indian Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by section 121 that is, the abetting of the waging of war is under the Code as much an offence of treason as the waging of war itself. The word "abetment" is defined in section 107 of the Code and one of its meanings, as given in there, is "instigating any person to do anything." This meaning is not excluded by anything that occurs in section 121. The general law is laid down in sections 107—120 of the Code. According to it, "to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused." This applies to the abetment of the waging of war against the King as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that, while under the general law as to abetment a distinction is made for the purpose of punishment between abetment which has succeeded and abetment which has failed, section 121 does away with that distinction so far as the offence of waging war is concerned, and deals equally with an abettor whose instigation has led to war and one whose instigation has taken no effect whatever, and that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its first appearance and nipped in the bud with a strong hand. *Per* Heaton J., Under section 107 of the Indian Penal Code there may be instigation of an unknown person. The word "abet" as used in section 121 of the Code, has the same meaning as is given to it by section 107. The "abetment" meant by section 121 is not necessarily confined to abetment of some war in progress. There may be, and usually is, instigation of rebellion before rebellion actually begins, that kind of instigation is under the Code abetting waging war against the King. So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war.

Emperor v Ganesh Damodar Sararkar

34 Bom 394

(14) The accused was the printer and publisher of *Karmayogn* newspaper which published an article entitled "To my Countrymen" purporting to be written by one Arabind Ghose in respect of which a charge under section 124 A Penal Code was framed. The printer and publisher was tried alone and convicted by the officiating Chief Presidency Magistrate and sentenced to six months rigorous imprisonment.

Held that a letter or an article in a newspaper containing an attack on a rival political organization and not on the Government established by law in British India, is not seditious within the meaning of s 124 A of the Penal Code. A man may criticize or comment on any act or measure of the Government, legislative or executive, and freely express his opinion on it. He may express the strongest condemnation of such measures and he may do so severely and even unreasonably, perversely or unfairly provided, he does not whether in his comments on measures, or not hold up the Government itself to hatred and contempt. It is not sedition for a writer to describe the Reform Scheme as being monstrous and misbegotten, because it is not founded on democratic principles and not a genuine reform or a genuine initiation of constitutional progress, or to assert that some of the police officials and the judiciary are corrupt, unscrupulous and partial or to state that if an organisation which he believes to be lawful is suppressed by proclamation it is arbitrary, and that in such case the responsibility will not rest on him for the madness which crushes down open and legal political activity in order to give a desperate and sullen unscrupulous forces, or to impute the doctrine of the Government within legal limits or to describe the British Courts in India as unreasonably expensive. In construing a newspaper article its meaning must be taken from the article as a whole and not from isolated passages. Words and expressions such as arbitrary executive must not be looked at as if the writer was a constitutional lawyer instead of a journalist. Articles not forming the subject of the charge and appearing in other issues of the same paper are not admissible to show the intention of the writer in the article complained of in the absence of proof of his identity. The declared printer and publisher of a letter or article in a newspaper is amenable to the law merely on proof that it is calculated to excite feelings of disaffection, hatred or contempt against the Government but the prosecution must prove either that the writer does in fact excite such feelings or that his intention was to do so. The writer of an article may be guilty of sedition, no matter how guardedly he attempts to conceal his real object, but the registered printer and publisher cannot be punished if the concealed object is not established by the evidence on the record.

Muramohan Ghose v Emperor (Karmayogn Case)

38 Cal 253

(15) A single expression that the people of Bengal are trodden under the feet of outsiders used incidentally in a newspaper article, otherwise innocuous, does not constitute the whole seditious. An article imputing wholesale bribery to the numerous officers of the law courts and to the lower officers of the police force, and expressing grave doubts as to whether the Government ever inquire into such abuses, so much is it occupied with investigations of boycott, dacoity and sedition, published when sedition is rife and the minds of people excited may have the effect of creating a feeling that the Government is not doing its duty, and exceeds the limits of fair comment and is seditious, irrespective of the question of the truth of the allegations. Where the writer of an article inveighed both against the Babus and Meahs as professing brotherhood with the poor Mahomedan ryots and then robbing them, and referred to the alleged conduct of Christian missionaries towards their converts, by way of illustration, without any deliberate attempt to excite one class against another, the conviction under s 153-A of the Penal Code was set aside as bad in law. *Per Richardson, J* —If a particular article is charged as being seditious on the ground that it says more than appears on the face of it, it is the duty of the prosecution to show that it has, in fact, the guilty meaning or intent attributed to it. *Semble* —An appeal lies under ss 35 (3) and 408, prov (c), directly to the High Court from a conviction and separate sentences under ss 124 A and 153 A of the Penal Code passed on the same trial.

Joy Chandra Sarkar v Emperor, (Rangpur Barabakh) (1910)

38 Cal 227

(16) The declared printer or publisher of a newspaper containing seditious articles is responsible for them unless he makes out, on sufficient evidence, that he had in fact nothing to do with them. Where the editor of a newspaper was convicted and sentenced under section 124 A of the Penal Code, and the accused made his declaration as printer and publisher thereafter, and continued so to act after the editor had resumed work on release from jail, and further allowed his name to appear as such though he was absent from the town of publication of the paper when certain seditious articles appeared therein and engaged during the period in his own private business without taking any interest in the paper, it was held that he had not made out the *bona fides* of his absence, and was, therefore, legally responsible for the articles.

Surendra Prosad Lahiri v Emperor

38 Cal 214

(17) The accused was charged at one trial with having committed offences punishable under s 124 A and 153 A of the Indian Penal Code, on two charges, one with respect to each of the two articles he published on different dates in his newspaper called the *Hind Swarajya*. At the trial there was no other evidence of the publication of the newspaper in Bombay except the declaration made by the accused under the Press Act, and the deposition of witnesses who received the newspaper in Bombay as Government servants in their capacity as such. The accused was convicted on both the charges and sentenced separately on each of them. It was contended in appeal that there was no evidence of the publication of the newspaper in Bombay, and that there was a misjoinder of charges vitiating the trials. *Held*, that the evidence on record was sufficient to prove the publication of the newspaper in Bombay. *Held*, further, that the trial was not bad in that there had been no misjoinder of charges. *Per Chandavarkar J* —It is true that the Magistrate framed two charges one with respect to each of the two articles. But in each charge the offences are mentioned as being those punishable under s 124 A and 153 A of the Indian Penal Code, so that the accused had distinct notice of the charges he had to answer, and he could hardly have been prejudiced by the somewhat informal mode in which the charges were drawn up. The defect, if any, was no more than a mere irregularity, cured by the provisions of s 225 of the Code of Criminal Procedure. There is nothing in the Criminal Procedure Code which directs that where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Indian Penal Code the section or sections in either case being the same, the joinder of the charges under those sections is illegal. Substantially the acts amount in such a case to offences punishable under the same sections of the Indian Penal Code and therefore they are offences of the same kind. *Per Heaton J* —Section 234 of the Criminal Procedure Code does not say that at most a trial must be limited to three charges. It says it must be limited to three offences, and that the offences must be of the same kind. The "offence" as defined by the Code itself, is the act or omission made punishable. The offences in this case were two in number, namely, the publication of two articles on two different dates. These two offences were, as charged, punishable under the same section of the Indian Penal Code, and were, therefore, offences of the same kind. The word "section" in section 234 of the Criminal Procedure Code is not invariably to be read as singular. It is not the intention of the Code of Criminal Procedure, either express or implied, to exclude from the operation of s 234 of the Code, an offence because it is made the subject of more than one charge. Charging one act or series of acts under more than one section of the Indian Penal Code, is a proceeding provided for in s 235 (clause 2) and in s 236 of the Criminal Procedure Code and is also provided for in s 71 of the Indian Penal Code. The Court may charge an offence twice over under two different sections but by so doing it cannot increase the sentence which may be imposed.

That principle is not offended by trying together separate offences for each of which there is more than one charge

Emperor v Tribhovandas Purushottam Dass Mangoolewalla (Hind Swaraja Case)
33 Bom 77

(18) Section 196 of the Criminal Procedure Code only requires that the complaint should be made upon authority from the Local Government and not that the actual complaint must be expressly authorised by the Local Government. The Court has only to see whether the complaint is made by order or under authority of Government. Where a police officer files a complaint in a non cognisable case or regarding an offence of which it is not his duty to report, such complaint is a complaint within section 4 (b) of the Criminal Procedure Code and is not a police report. A complaint is not defective because it did not set out the speeches or alleged seditious words which form the subject matter of the subsequent charge. Even if such omission is a defect, it is an irregularity which will be cured by section 537 (a) unless it has occasioned a failure of justice. When a magistrate, after duly taking cognizance of a case under section 200, Criminal Procedure Code, makes an order to investigate not authorised by law, such unauthorised order does not vitiate subsequent proceedings. A charge of an offence under section 124A is defective if it does not set out the speeches alleged to be seditious, but such defect does not, under sections 537 and 225 of the Code of Criminal Procedure, vitiate the proceedings and any objection on the ground of such defect ought to be taken as early as possible. Where certain speeches form the subject matter of a charge for sedition and when such speeches form part of a series of speeches or lectures on one topic, delivered within a short period of time, any of such speeches or lectures will be admissible, under section 14 of the Evidence Act, as evidence to prove the intention of the speakers, in respect of the speeches which form the subject of the charge. The offence of abetting under section 109, Indian Penal Code, plus presence of the abettor on the occasion of the crime abetted is, constructively, under section 114, the offence abetted, and a sanction under section 196 of the Criminal Procedure Code to prosecute for an offence under section 124A will authorise a complaint under s 124A and section 114. Where an agreement exists between two parties, in pursuance of which speeches are delivered by them, such speeches are admissible to prove the object of the agreement.

V O Chidambaram Pillai and Subramania Siva, v Emperor (1908)

32 Mad 3

(19) The Criminal Procedure Code, in so far as it interferes with the mode of trial by jury, is not *ultra vires* under the proviso to s 22 of the Indian Councils Act (24 & 25 Vic c 67). An European British subject can, under section 451 of the Code relinquish his right to be dealt with as such. Where the magistrate explained to such a person the nature of the charges framed against him, and his rights under ss 447 and 450, and then asked him whether he claimed to be dealt with as such, and the latter stated that he did not claim the right -- *Held* that he had relinquished the right. Where an order under s 196 of the Criminal Procedure Code authorized a particular police officer to prefer a complaint of offences under ss 121A, 122, 123, and 124 of the Penal Code "or under any other section of the said code which may be found applicable to the case," and the examination of the complainant also referred to the same section -- *Held* that no complaint under s 121 of the Penal Code was thereby authorized by the Local Government or in fact preferred, that the Magistrate had no power to commit thereunder and that the defect was not cured by a subsequent order obtained while case was before the Sessions Court, authorizing a complaint under the section which was not in fact made thereafter, nor did s 532 of the Criminal Procedure Code apply in such a case. The Local Government cannot delegate to any other body or person the controlling power and discretion of determining whether cognizance shall be taken by the Court of an offence mentioned in s 196 of the Criminal Procedure Code, and its judgment must be specifically directed to the particular section, and no other, under which the prosecution is to be carried on, and the order of authority should be preceded by a deliberate determination in this respect. Any order authorizing a complaint under certain specified sections "or under any other sections found applicable," if it means found by any one other than Government, involves a delegation which cannot be sustained. Where the accused were all alleged to have been members of a secret society, with its head-quarters in Mankotla in the suburbs, and its places of meeting in Calcutta and elsewhere, and to have joined in the unlawful enterprise, and with others known and unknown, to have conspired to wage war or to deprive the King of the sovereignty of British India, and to have collected arms and ammunition with such intent and to have actually waged war -- *Held*, that the joint trial of the accused on charges under sections 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. A confession under section 164 of the Criminal Procedure Code must be made either in the course of an investigation under Chapter XIV or after it has ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation. Where a number of persons were arrested on the 1st May, and the confessions of some of them were recorded on the 4th and 5th, while others were brought in subsequently and their confessions

taken, while the police investigation was then actually going on, and on the 17th an order under s 196 was obtained and the police report sent in, and on the next day the examination of the prosecution witnesses begun—*Held*, that the Magistrate did not take cognizance under s 190 of the Code, nor did the inquiry commence on the 4th and that the confessions were taken in the course of an investigation under Chapter XIV. The fact that the Magistrate who has taken the confessions, afterwards holds the inquiry, does not, under section 164, constitute the recording of the confessions an examination of the accused in the course of it and at its commencement. Section 164 includes confessions taken by a Magistrate who afterwards holds such inquiry or trial. Sections 164, 342 and 364 of the Code are not exhaustive, and do not limit the generality of section 21 of the Evidence Act as to the relevancy of admissions. The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under section 161 of the Criminal Procedure Code or section 29 of the Evidence Act, though such fact may be material on the question of its voluntariness. Methods of proving handwriting discussed. A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. Section 7 of the Evidence Act does not sanction the comparison of any two documents, but requires, first, that the standard writing shall be admitted, or proved to be that of itself.

... of proof,

not conversant with the subject and without guidance from the arguments of Counsel and evidence of experts. The value of expert evidence of handwriting discussed. To constitute an admission, the document need not be written by the party against whom it is used. It is sufficient if it is found in his possession, and his conduct thereto creates an inference that he was aware of its contents and admitted their accuracy, but, unless this is done, the document cannot be used against him as proof of its contents. What conduct would properly give rise to such inference depends on the fact of each case. The mere fact of possession of letters is not of much value, unless it is shown that their contents were recognized and adopted by the replies elicited or the conduct inspired by them. The expression "wages war" in s 121 of the Penal Code must be construed in its ordinary sense, and a conspiracy to wage war, or the collection of men, arms and ammunition for that purpose is not waging war. An agreement between two or more persons to do all or any of the unlawful acts mentioned in section 124 A of the Penal Code is an offence, and the fact of the purpose not being immediate is only material in connection with s 95. No proof is necessary of direct meeting or combination, nor need the persons be brought into each other's presence, but the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Nor is it necessary that all the accused should have joined in the scheme for its inception. Eliciting answers from witnesses which under examination-in-chief or re-examination, by leading questions deprecated. *Per* Carnduff J.—Regard being had to the definition of "proved" in section 3 of the Evidence Act, "moral conviction," provided it is based exclusively on evidence that is admissible is not distinguishable from "legal proof." Save when an accused person is being examined under section 342 of the Criminal Procedure Code there is nothing to prevent a Magistrate from eliciting information from him by independent enquiry so long as the information is voluntarily given. A statement by an accused to the police, which tells against him but does not amount to an admission of guilt, is admissible in evidence. Each case must be decided as it arises with reference to the question whether the particular statement is or is not a confession. Handwriting may, in addition to the usual methods, be proved by circumstantial evidence under section 67 of the Evidence Act which prescribes no particular kind of proof.

Brendia Kumar Ghose and others v Emperor (1909)

37 Cal 447

(20) It is not necessary, in order to establish the fact of publication of seditious matter transmitted through the Post office, on a charge under section 124 A of the Penal Code, to prove the actual posting nor that it was printed and published under the directions of the accused. If the seditious writing is shown to be in the hand writing of the accused and it is further proved that the contents were in fact printed and published, there is sufficient evidence of publication by him. The sending through the post of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others, when the same was intercepted by another person and never reached the addressee, constitutes an attempt within the purview of section 124-A of the Penal Code.

Surendra Narayan Adhikary v, Emperor (1912)

39 Cal, 522

(21) On a charge under s 124 A of the Penal Code the sending of a pamphlet by post, addressed to a private individual not by name, but by designation as the representative of a large body of students, amounts to publication. It is necessary for the admission of evidence of a hand writing expert, under s 45 of the Evidence Act, that the writing with which the comparison is made should be admitted or proved beyond doubt to be that of the person alleged, and that the comparison should be made in open Court in the presence of such person.

Suresh Chandra Sanyal V Emperor (1912)

39 Cal 606

CRIMINAL PROCEDURE CODE—SECTION 108

Extract from Select Committee's Report, dated the 16th October 1898

Clause 108—We have inserted as clause 108 the clause of which notice was given by the Government on the 21st December last. In inserting it we have made the following modifications—

We have confined the jurisdiction to Chief Presidency and District Magistrates, and we have provided that the bond may be with or without sureties

We have cut out the reference to "obscene matter," as we think that that is sufficiently provided for by the ordinary law. We have explained the reference to "seditious matter" by reference to the provisions of the proposed new section 124 A of the Indian Penal Code, and we have included matter punishable under the proposed new section 153 A of that Code.

We have cut out the reference to "defamatory matter" as that term is much too wide, and after consideration we have substituted the words "any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code." The term "Judge" will, of course, have the meaning assigned to it by the Indian Penal Code. This perhaps does not protect all the public officers who, we think, are entitled to protection, but it is difficult to draw any other satisfactory line.

We have considered the question whether these orders should be subject to appeal or revision and we have come to the conclusion that they ought to be subject to revision, as the High Court can then act of its own motion as well as on the petition of the party aggrieved. In case there should be any doubt on the point, we have provided in clause 439 (6) that all orders under the Code (not expressly excepted) made by an inferior Court shall be subject to revision by the High Court.

Sd M D Chalmers, C M Rivaz, R M Sayani, Bishamber Nath,
C C Stevens, H T Prinsep, J D La Touche.

The 16th February, 1898

Minutes of dissent appended by the Hon'ble Mr R M Sayani, and Hon'ble Pandit Bishamber Nath

Extract from the Note of Dissent by the Hon'ble Mr R M Sayani, dated the 16th February 1898

I sign the report subject to the following observations

* * * * *

Section 108—This is a most objectionable section. Simply on information, which may or may not be true, any person, alleged to be disseminating, or attempting to disseminate, or in anywise abetting the dissemination of seditious matter or any matter the publication of which is punishable under section 153 A, may be required to give security for good behaviour, and on failing to give such a security may be rigorously imprisoned. This section should, therefore, be omitted. If it is, however, retained, it should not be put into force without previous Government sanction; all orders made under it should be subject to appeal to, and revision by, the High Court; the period of security should be reduced to one month and sureties should not be required.

Orders under this clause have no doubt been made subject to revision by High Court, but that procedure would place a person concerned rather under a considerable disadvantage, as, under subsection (1) of s 439 of the Criminal Procedure Code, the High Court may, *in its discretion*, exercise any of the powers conferred in a court of appeal by certain sections specified therein. Besides as a matter of practice, the High Courts are generally not disposed in the exercise of their Revisional powers to go into questions of appreciation of the weight of evidence

* * * * *

Extracts from the Note of Dissent by the Hon'ble Pundit Bishambar Nath, dated the 16th February 1898

Clause 108—The insertion as clause 108 of the clause of which notice was given by the Government on the 21st December last is, I submit, objectionable. Besides other exceptions to which it is open, the extension of the powers it confers is not safeguarded by a right of appeal to the High Court, while the scope of the clause is calculated to bring all newspapers under a complete control of Magistrates, many of whom might not be indisposed to give effect to the provisions of the clause upon mere information.

It is desirable also to subject the initiation of proceedings under this clause, if it is allowed to stand in its present form, to the sanction of the Local Government, which is already provided for prosecutions either under 124 A or the proposed new section 153 A.

* * * * *

Schedule II, Sections 124 A and 153 A of column 8.—The alteration proposed to be made here, for making offences under sections 124 A and 153 A triable by the Chief Presidency or District Magistrate, is open to a grave objection. There is no question of lending undue *eclat* or giving notoriety to proceedings in cases of sedition. In absence of a specific provision in the Code, allowing such trials to be held in the *mu/assal* with the aid of jury, it is desirable, in the ends of justice, that persons accused of offences of sedition should be triable by independent Tribunals commanding the confidence of the people, so that no cause for any supposed distrust might arise.

A High Court or Sessions Court allowed to try cases with the aid of jury or assessors would generally be preferable to a District Magistrate, as in the majority of instances such prosecutions are likely to originate on his motion, and ordinarily he is the chief executive authority also. If the law of sedition here is to be assimilated to the law of Great Britain, why should not the same safeguards be extended here which the humanity of the law allows there?

The Code provides remedy in such cases to apply for leave to transfer to High Court, but the procedure is attended with difficulties against which an accused person would have to contend, presumably to his disadvantage.

CRIMINAL PROCEDURE CODE,—SECTION 108

Security for good behaviour from persons disseminating seditious matter. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his

jurisdiction any person, who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in any wise abets the dissemination of,—

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, or
- (b) any matter the publication of which is punishable under section 153A of the Indian Penal Code, or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, or printed or published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, except by the order or under the authority of the Governor-General in Council or the Local Government or some officer empowered by the Governor-General in Council in this behalf

Notes

(1) The provisions of Ch VIII of Cr Pro Code, 1898, are preventive in their scope and object and are aimed at persons who are a danger to the public, by reason of the commission by them of certain offences. The test under s 108 is whether the person proceeded against has been disseminating seditious matter, and whether there is a fear of a repetition of the offence. In each case it is a question of fact which must be determined with reference to the antecedents of the person and other surrounding circumstances
Emperor v Vaman

11 Bom L R 743

(2) (The term "*swaraj*" does not necessarily mean Government of the country to the exclusion of the present Government, but its ordinary acceptance is "home rule" under the Government. The incitement of the members of a public meeting to exert themselves to secure "*swaraj*" does not amount to the offence of sedition under s 124-A of the Penal Code, and is consequently not within the purview of s 108 of the Criminal Procedure Code

Beni Bhushan Roy v Emperor (1907),

34 I Cal 991

ACT No VI OF 1908

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 8th June, 1908)

An Act further to amend the law relating to explosive substances

Whereas it is necessary further to amend the law relating to explosive substances, It is hereby enacted as follows —

Short title, extent and ap
plication

1 (1) This Act may be called the Explosive Substances Act, 1908.

(2) It extends to the whole of British India and applies also to—

- (a) all native Indian subjects of His Majesty in any place without and beyond British India,
- (b) all other British subjects within the territories of any native prince or chief in India

2 In this Act the expression "explosive substance," shall be deemed to include any materials for making any explosive substance, also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance, also any part of any such apparatus, machine or implement

(3) Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added

Punishment for causing explosion likely to endanger life or property

4 Any person who unlawfully and maliciously

(a) does any act with intent to cause by an explosive substance or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property, or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India,

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added

5 Any person who makes or knowingly has in his possession or under

Punishment for making or possessing explosives under suspicious circumstances

his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added

Punishment of abettors

6. any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence

Restriction on trial of offences

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Local Government or the Governor-General in Council,

Statement of Objects and Reasons.

Recent events have brought prominently to notice the inadequacy of the existing law to deal with crimes committed by means of explosive substances. The Indian Explosives Act, 1884, was framed to prevent accidents rather than to prevent crime and its provisions are clearly inadequate to meet the present emergency. No sentence of imprisonment can be imposed under that Act and the maximum penalty is only a fine of three thousand rupees. The Indian Arms Act, 1878, though it applies to the possession of explosives as well as arms, is also inadequate in respect both of the penalties it allows and the scope of its provisions for dealing promptly with preparations to manufacture bombs and other explosives. The Penal Code provides for the punishment of persons who cause hurt or mischief by means of explosive substances and it also deals with attempts to cause hurt or mischief but only when any act towards the commission of the offence is actually done. But it does not provide any penalty for making or possessing explosive substances with unlawful intent and it does not in other cases always provide such severe penalties as are requisite. The Governor-General in Council therefore considers it necessary to supplement the existing law by an Act on the lines of the English *Explosive Substances Act, 1883*, which was enacted for the express purpose of dealing with anarchist crimes. The Bill which has been drafted to give effect to this decision provides for the punishment of any person who causes an explosion likely to endanger life or property, or who attempts to cause such an explosion, or makes or has in his possession any explosive substance with intent to endanger life or property. It further makes the manufacture or possession of explosive substances for any other than a lawful object a substantive offence and throws on the person who makes or is in possession of any explosive substance the onus of proving that the making or possession was lawful. It also provides adequately for the punishment both of principals and accessories.

6th June 1908

H ADAMSON.

Notes

(1) Where a complaint was filed by a sub Inspector of Police before the Sub divisional Magistrate of an offence under s 399 of the Penal Code, and the facts disclosed also an offence under s 4(b) of the Explosive Substances Act (VI of 1908), of which the Magistrate could not then take cognizance for want of the consent of Government under section 7 of the Act, and a complaint was subsequently filed by the Superintendent of Police with such consent obtained before the Additional District Magistrate.—*Held*, that the latter had jurisdiction to take cognizance of the offence and that the initiation and continuation of the proceedings by him were legal, notwithstanding that he had not withdrawn the original case to his own file.—*Held*, also that in any case having regard to sections 529 (e), 530(f), and 531 of the Criminal Procedure Code, unless it appeared that the proceedings wrongly held had, in fact, occasioned a failure of justice, they could not be set aside. A search for explosives by Police officers of rank not below that of an Inspector, is legal under rule 32(1) (b) of the Government Rules framed under the Indian Explosives Act (IV of 1884). Section 309 (1) of the Criminal Procedure Code requires the opinions of the Assessors to be stated orally and not in writing or in the form of a judgment under s 367. Under s 399 of the Penal Code, having in possession or immediate control any explosive substance is one of several means to the end, whereas, under s 4(b) of the Explosive Substances Act, is the offence itself provided the necessary intent is proved. In order to render documents found in the possession of a party admissible against him as proof of their contents, it is necessary to show that he has in some way identified himself or, in other words, has by any act, speech or writing manifested an acquaintance with and knowledge of the contents of all or any of them. The rule would apply more strongly where some of the papers and letters were received and others written, by the party against whom they are sought to be used.

(2) The three Appellants were tried in the Court of the Additional Sessions Judge of Midnapore on charges framed under the Explosive Substances Act, 1908 and they were each found guilty. Santosh Chandra Das was convicted under sections 4 a, 1 b, and 5 and sentenced to ten years transportation under s 4-a and seven years transportation under s 5, these sentences to run concurrently. Surendra Nath Mukerjee was convicted under s 4, 5 and 6 and sentenced to seven years transportation. Separate appeals were preferred and each appellant separately represented in the High Court Calcutta. The judgment of the Court was delivered by Jenkins C J on the 1st June 1909. The convictions and sentences were set aside and the appellants were directed to be released from custody.

Joguban Ghosh, Santosh Chandra Das and Surendra Nath Mukerjee Appellants v the Emperor
Reported in 13 C. W. N 861

(3) *Per Woodroffe and Cox, J J.* On the question of the standard of proof, there is but one rule of evidence which in India applies to both Civil and Criminal trials and that is contained in the definition of "proved" and "disproved" in Sec 3 of the Evidence Act. The test in each case is, would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which coming from itself dictates a conscientious and prudent exercise of its judgment. There is a presumption against crime and of misconduct and the more heinous and improbable a crime is, the greater is the force the evidence required to overcome such presumption. The English rule in these matters does not, as such, apply in India. *Jarat Kumari v Bisvesu Dutt*. Where a document is privileged from production, no adverse inference can be drawn from its production. This rule applies as regards the party claiming privilege and *a fortiori* it applies when the privilege is claimed by a third party. Although Section 123 of the Evidence Act does not in express terms prohibit a witness, if he be willing, from saying whence he got his information, the protection afforded by that section does not depend upon a claim of privilege being made, but it is the duty of the Court, upon first objection taken, to exclude such evidence. *A fortiori*, where privilege is claimed, no adverse inference can be drawn therefrom. Where articles are found in a part of a house to which several persons living in the house have access, such as a *Buthakkhari*, there is no presumption that they are in the possession or control of any person other than the *Karta* or head of the house. *Semle*. It is immaterial, in an action for malicious arrest, under what section of an Act an arrest is made, if in fact the circumstances are such that the Act justified arrest, and a person making a search is entitled to call in and any statute which justifies his action, quite irrespective of whether it was present or not to his mind when he made the search. The Court is entitled to ask Counsel, who, during the conduct of a case makes charges of misconduct, whether he makes the charges on instructions and if so, on whose. It is not sufficient to plead instructions. Counsel have a responsibility in the matter and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward. Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court. The latter cannot use them as evidence in the case and for the purpose of the trial, would have to treat them as confidential, but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against Counsel by the full Court. Whenever a Court relies on a book of reference, such as a work on medical Jurisprudence, it should be made known at the trial to the parties, so that they may have an opportunity of adducing evidence or argument on the point. The following resolutions of the Bar Council approved —

(a) If Counsel knows or has reason to believe that he will be an important witness in a case he ought not to accept retainer therein. (b) If he accepts a retainer not knowing or having reason to believe that he will be such a witness, but at the opening or at any subsequent stage before evidence is concluded it becomes apparent that he is a witness on a material question of fact he ought not to continue to appear in the case unless he cannot retire without jeopardising the interests of his client. (c) If Counsel knows or has reason to believe that his own professional conduct on matters out of which the action arises is likely to be impugned in the case, he ought not to accept a retainer. (d) If he accepts a retainer not knowing or having reason to believe that his own professional conduct in such matters is likely to be impugned, but finds in the course of the case that it is so impugned, he ought to adopt the same course of conduct as is mentioned in clause (b) *ante*. (e) In either of the cases mentioned in clauses (b) and (d) there is no rule of professional ethics which debars Counsel, if he continues to act as Counsel in the case, from going into the witness box and being cross examined."

Although the resolutions of the Bar Council are not binding on the Courts, the Bar Council is the recognised authority on matters of professional conduct and etiquette affecting Counsel and its opinion is of the greatest weight and value. There is nothing necessarily unprofessional in Counsel giving evidence in a case in which he appears as such. As a

general practice, however, it is undesirable when the matter to which Counsel depose is other than formal, that they should testify either for or against the party whose case they are conducting. Under section 118 of the Evidence Act, Counsel although they may be in the case, are competent to testify whether the facts in respect of which they give their evidence occur before or after their retainer. The rule laid down in section 114 section (g) of the Evidence Act that the Court may presume that evidence which could be and is not produced, would, if produced be unfavourable to the party who withholds it, was held to apply to the case of Counsel engaged in a suit who should not have been, under the circumstances counsel, but should have been called as a witness. It is unprofessional for Counsel to cross examine a witness as to facts within his personal knowledge. Where Counsel during the hearing of a case calls for the production of a book, which is produced and handed to him by his opponent with certain pages marked as those only to which he may refer in respect of the subject matter of his cross examination, it is improper for Counsel who calls for the book to inspect any of the other pages. If a suit on a tort is barred as against one person, the period of limitation cannot be extended because it happens to be against three persons who are alleged to have committed the tort in conspiracy. The same set of facts cannot constitute separate causes of action both for a tort, and for a conspiracy to cause damage. A suit for damages for false imprisonment or malicious prosecution against joint tortfeasors, is governed by the one year rule under articles 19, and 23 of the Limitation Act. There are instances in which two or more persons can render themselves liable to civil proceedings by combining to injure the plaintiff, although if one of them did the same act by himself and without any preconcert with others, he would escape liability. An action on such a conspiracy would lie in this country. In an action on conspiracy special damage must be proved. *Per Chitterraj J*—There is no authority for holding that a tort, when committed by several persons acting in concert is different from the same tort committed by a single individual. The combination in such cases may be an element of aggravation in the assessment of damages, but does not suffice to make it a different tort. Conspiracy or wrongful combination is not a material element in the constitution of a wrong.

The above is an extract of High Court judgment on appeal by the Defendants, Donald Weston, Mazharul Haq and Lal Mohan Guha in the suit of Pyari Mohan Dass v Weston and others, from the judgment of Fletcher J. This suit was originally instituted in the Court of Second Sub Judge Midnapore on 15th November 1909 and was transferred to the High Court Calcutta, by an order of Fletcher J dated 13th June 1910.

This judgment is reported in 40 Cal 893, and 16 C W N 145.

(4) The charges against the accused were under s 4(b) of the Explosive Substances Act, 1908, against four of them for having had in their possession or under their control explosive substances with intent by means thereof to endanger life, and under s 120-B I P C, against all for having conspired with one another and other persons to make and keep explosive substances with intent by means thereof to endanger life or enable other persons to endanger life.—*Held*—That the defect in the charge under s 4(b) of the Explosive Substances Act, inasmuch as it omitted to state that the accused were in possession of explosive substances or had them under their control “unlawfully and maliciously” and that it was the intent of the accused to endanger life in “British India” did not vitiate the trial and conviction and the case was covered by s 225 and by cl (a) of s 537 Criminal Procedure Code. That the legality of the trial must be determined with reference to the language of s 239 Criminal Procedure Code. That the trial was not bad on the ground that persons alleged to be conspirators in the charge were not prosecuted, although their names and addresses were known to the prosecution. That in stating the object of conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed. That the charge of conspiracy must not be indefinite. That it was not obligatory on the Crown to prosecute the accused under s 121 A, even if the facts disclosed that they committed an offence under that section. Where two or more persons have conspired together for committing some offence and one or more of them have committed that offence in pursuance of the conspiracy, but others have not, it is permissible to charge and try them together for the conspiracy as also for the substantive offence. That in Criminal cases there can be no conviction unless guilt is established with very great clearness. The proof of the case against the prisoner must depend for its support, not upon the absence or want of any explanation on the part of the prisoner himself but upon the positive affirmative evidence of his guilt that is given by the Crown. That on a charge of conspiracy general evidence of the existence of the conspiracy may first be given, before particular facts are proved to show that one or more of the defendants took part in it. That in the present trial the evidence adduced by the prosecution to establish that some of the accused had associated, previous to the period of the conspiracy charged, with certain persons who were convicted under s 121A Indian Penal Code, was inadmissible. That on a charge under s 4 cl (b), of the Explosive Substances Act, which it is not necessary to prove criminal possession of the explosive substance by the accused, it must be proved that it was in his power or control, possession to be punishable must also be possession with knowledge and assent. That in the case of one of the accused, who had admittedly

assumed a false name, evidence should not have been allowed to prove the dishonourable purpose for which the false name had been assumed, a purpose in no way connected with the conspiracy charged against him. That the Sessions Judge was right in disallowing questions put by the defence to elicit from individual prosecution witnesses whether he was a spy or informer and also to discover from police officials the names of persons from whom they had received information. That the procedure followed by the Sessions Judge in accepting written statements from the accused was in accordance with the universal practice of the Courts of the province, but such written statements do not take the place of evidence nor of such examination of the accused as is contemplated by the Code.

Amrita Lal Hazara v King Emperor (1914) The case is reported in 19 C W N 677 679

(5) The finding on the 3rd charge (under section 120B, Indian Penal Code read with section 19 (c) of the Arms Act) was that there was only a conspiracy to manufacture without an actual manufacture, and the Sessions Judge sentenced the accused on this charge to three year's rigorous imprisonment. *Held*,—That there was no misjoinder of charges. That offences charged were committed in the same transaction and s 239, Cr P. C., authorises such charges to be tried together.

Fletcher, J.—In cases of conspiracy the agreement between the conspirators cannot generally be directly proved, but only inferred from other facts proved in the case. The facts proved against the accused, namely, the hiring of the houses, the finding of a considerable number of parts of fire arms in the house, the finding of tools there, also that work had been done to some of the parts of fire arms found, left no doubt that a conspiracy existed between them to manufacture fire arms.

Beachcroft, J.—That the term "transaction" is not synonymous with the term "offence" and so long as the conspiracy continued, the transaction which began with the forming of the common intention continued and the offences of possession of fire arms and conspiracy to manufacture arms were committed in the same transaction.

That on a conviction under section 120B, I P C, if an offence has been committed, the punishment is provided by section 109, I P C, and if an offence has not been committed the punishment is limited to the extent provided by section 116.

Semble—Strictly speaking, in cases where an offence has been committed in pursuance of a conspiracy, there should not be any conviction for conspiracy, but for abetment of the offence, for conspiracy followed by an act done to carry out the purpose of conspiracy amounts to abetment.

Khagendra Nath Chaudhuri v The King Emperor (1914) The case is reported in 19 C W N, 706

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

An Act for the prevention of incitements to murder and to other offences in newspapers

Whereas it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers, It is hereby enacted as follows -

(2) It extends to the whole of British India.

(a) "Magistrate" means a District Magistrate or Chief Presidency Magistrate

(c) "printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing

3 (1) In cases where, upon application made by order of or

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in the respect of such newspaper under section 5 of the Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned

(3) In cases of emergency or in cases where the purpose of the application might be defeated by delay the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1898

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any

4 (7) The Magistrate may by warrant empower any Police-officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

(a) where the newspaper specified in such warrant is printed or published, or

(b) where any such property may be or may be reasonably suspected to be, or

(c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept

(8) Every warrant issued under sub-section (7) so far as it relates to a search shall be executed in manner provided for the execution of search warrants by the Code of Criminal Procedure, 1898

5 Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute

6. Save as provided in section 5, no order duly made by a Magistrate under section 3, shall be called in question in any Court

7 Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.

Power to annul declaration under Registration of Books Act, 1867

XXV of 1867

8 Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the Press and Registration of Books Act, 1867

Penalty
Application of Code of Criminal Procedure
V of 1898

9 All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the Code of Criminal Procedure, 1898

10 No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law

Operation of other laws not barred

Statement of Objects and Reasons

The circumstances of the recent outrages by means of explosive substances have disclosed a close connexion between the perpetrators of such outrages and certain newspapers which have from time to time published criminal incitements. Experience has shown that prosecution under the existing law is inadequate to prevent the publication of these incitements. In the case of one newspaper, persons registered as printer and publisher have been within a comparatively short period prosecuted and convicted several times while the real authors of the incitements have concealed their identity. This newspaper notwithstanding these prosecutions continues to exist and to pursue its criminal course. Nor is it a solitary instance of the kind.

It has therefore become necessary to make better provision for the prevention of such incitements in newspapers. The scope of the present Bill is confined to incitements to murder, to offences under the Explosive Substances Act, 1908, and to acts of violence. It gives powers in such cases to confiscate the printing press used in the production of the newspaper and to stop the lawful issue of the newspaper.

The procedure adopted in the Bill follows the general lines of that provided in the Code of Criminal Procedure for dealing with public nuisances, with the important addition that the final order of the Magistrate directing forfeiture of the press is appealable to the High Court within fifteen days. It is further provided that no action can be taken against a press save on the application of a local Government.

When an order of forfeiture has been made by the Magistrate, but only in that case, the local Government is empowered to annul the declaration made by the printer and publisher of the newspaper under the Press and Registration of Books Act, 1867, and thereafter neither that newspaper nor any other which is the same in substance can be published without a breach of the law.

It is also provided that no proceedings taken under the Bill shall bar the prosecution of any person for any act which constitutes an offence under any other law.

6th June 1908

H ADAMSON

(1) In 12 Bom 120 it was held that s 3 refers to the press and no order could be made under it limiting only to such portions of the press as were employed in printing the offending newspapers

(2) Dhondo was the owner of a printing press called the Arunyodaya Press at Thana. A weekly newspaper called the "Hindu Punch" was printed at the aforesaid press. Some of the issues of the newspaper contained articles which fell within the purview of the newspaper (Incitements to Offences) Act, 1908. Under section 3 of the Act the District Magistrate of Thana on the 6th October 1909 passed a conditional order for the forfeiture of the whole of the Arunyodaya Press and he made order absolute on the 18th idem. The applicant applied to the High Court contending that the Magistrate erred in making the order applicable to the whole printing plant and materials of the Press, but ought to have ordered the forfeiture of the printing press (used for the purpose of printing) or publishing the said papers only. Held that clause (c) of section 2 defines printing press to include all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing. As the paper was printed at the Arunyodaya Press the Magistrate was right in forfeiting the whole press as defined by the Act.

In Re Dhondo Kashinath Phadke,

34 Bom 327

(3) The question of the intention or knowledge of an individual may determine his criminal liability under the ordinary law of abetment by incitement by means of words written or spoken, but under the Newspapers (Incitement to Offences) Act no question of the intention of the writer, printer or publisher arises, and personal liability is imputed to any particular person. The order thereunder is not one against any person, but is purely restrictive and directed against the use or intended use, of a press for the purpose of printing or publishing a newspaper containing any incitement to murder or to any offences under the Explosive Substances Act [VI of 1908] or to any act of violence. The words "any incitement" in section 3 [1] of the Newspapers Act include direct and indirect incitement, and need not be addressed to any particular person, nor expressed in violent and outrageous terms. "To incite" means "to move to action, to stir up, to stimulate, to instigate or to encourage" and a newspaper article comes within the scope of section 3 if it is, as a matter of fact, calculated directly or indirectly to produce that effect. *Per Ryves, J.*—There can be no hard and fast canon as to what words or given set of words constitute "incitement." It is a question of fact in each case, and must usually depend largely on concomitant circumstances. The articles must be read as a whole and as far as possible, in the sense in which it was read by the section of the public to which it was primarily addressed, and also considered with regard to the occasion and place of publication and the class or status of persons likely to be affected by it. *Girija Sundar Chackerbatty V Emperor* [1908]

30 Cal 405

(4) The definition of a "newspaper" in section 2 [1] [b] of Act VII of 1918 must be read as a whole. It refers to a work which publishes periodically public news or comments thereon. It is not enough to take a single issue of it, and to pick out an isolated sentence or a paragraph therein which might by stretch of language be interpreted to contain public news or comments thereon. When it is disputed whether a work is a 'newspaper' the production ought to establish its alleged character by proof of the contents of more than one issue. To bring a case under s 3(1) the character of the offending paper as a 'newspaper' has to be first established, and this may not always be possible by the production and proof of the contents of one issue only. In a proceeding under section 3 of the Act the newspaper and the offending matter must be regularly proved. In such cases it is essential that the proceedings should be regularly conducted and the forms of law observed. Section 3 [1] of the Act confers very limited powers of forfeiture and only applies to the cases of presses used for the printing of newspapers which contain an incitement to the particular crimes or class of crimes specified therein. The word 'incitement' clearly implies the idea of rousing to action, instigation or stimulation. The use of seditious language, sufficient to bring the case under section 124A of the Penal Code, is not sufficient to bring the case within section 3 [1] of the Act. There must be something more direct and specific for that purpose. In the case of two persons regarding the guilt of one of whom only the Judges of the Appellate Court are divided in opinion, it may be that what has to be laid before another Judge is the case of such prisoner alone. But where they are equally divided as to the guilt of one accused, though in certain aspects they may be agreed, the whole case as regards the accused is laid before the third Judge, and not merely the point or points on which there is a difference of opinion, and it is his duty to consider all the points involved before delivering his opinion upon the case.

Sarat Chandra Mitra V Emperor

38 Cal 202

ACT NO XIV OF 1908

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor-General on the 11th December 1908)

An Act to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace

Whereas it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace, It is hereby enacted as follows:—

1 (1) This Act may be called the Indian Criminal Law Amendment Act, 1908

(2) It extends to the Provinces of Bengal and of Eastern Bengal and Assam, but the Governor General in Council may, at any time, by notification in the Gazette of India, extend the whole or any part thereof to any other Province (a)

(3) When extending Part I to any Province under sub-section (2) the Governor-General in Council may declare the operation of any provisions of that Part relating to the constitution of the Special Bench to be subject to such modifications as may in the opinion of the Governor-General in Council be necessary to adopt those provisions to the circumstances of that Province

PART I

SPECIAL PROCEDURE

2. (1) Where a Magistrate has taken cognizance of any offence specified in the schedule, and it appears to the Governor-General in Council or to the Local Government that in interests of peace and good order the provisions of this Part should be made to apply to proceedings in respect of such offence, the Governor-General in Council, or the Local Government, with the previous sanction of the Governor-General in Council, may make an order in writing to that effect and may by such order direct that the provision of this Part shall apply to such proceedings

(2) No order shall be made under sub section (1) in any case in which an order of commitment to the High Court or Court of Session has been made under the Code of Criminal Procedure, 1898, but, save as aforesaid, an order may be made in respect of any offence whether committed before or after the commencement of the Act, or, in the case of a Province to which this Part is extended under section 1, before or after such extension

3 (1) On receipt of an order under section 2 the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case has been transferred, shall proceed to inquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in the Schedule, and shall for that purpose record on oath

(a) The whole of the Act has been extended to the Presidency of Bombay,* the Presidency of Madras, United Provinces of Agra and Oudh the Punjab and the Central Provinces†

* Notn No 15 dated the 4th January 1910 and † No 65 dated the 13th January 1910

the evidence of all such persons as may be produced in support of the prosecution, and may record any statement of the accused if voluntarily tendered by him

(2) Where before the commencement of proceedings under this Act the evidence of a witness has been recorded under the Code of Criminal Procedure, 1898, in the course of an inquiry into the same offence as that to which such proceedings relate, such evidence may be treated for the purposes of this Act as if it had been taken under sub-section (1)

4 The accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during any such inquiry, nor shall any person have any right of access to the Court of the Magistrate while he is holding such inquiry

5 When the evidence referred to in section 3 has been taken, the Magistrate shall, if he finds that it is not sufficient to put the accused upon his trial for an offence specified in the Schedule, record his reasons and discharge the accused, unless it appears to the Magistrate that the accused should be tried or committed for trial under the provisions of the Code of Criminal Procedure, 1898, for any other offence, in which case the Magistrate shall proceed accordingly

6 When upon such evidence being taken the Magistrate is satisfied that it is sufficient to put the accused upon his trial for an offence specified in the Schedule, he shall —

- (a) frame a charge under his hand declaring with what offence the accused is charged,
- (b) make an order directing that the accused be sent to the High Court for trial, and
- (c) cause the accused to be supplied with a copy of the order and of the charge and of the evidence taken under section 3

7 In framing any charge under section 6 the Magistrate may also frame a charge for any offence not specified in the Schedule with which the accused may be charged at the same trial, and the procedure of this Act shall apply to any such charge

8. When an order for trial has been made under section 6, the Magistrate shall send the order together with the charge, the record of the inquiry and anything which is to be produced in evidence to the Clerk of the Crown or other officer appointed in this behalf by the High Court

9 (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the order for trial and before the commencement of the trial

(2) When the Magistrate examines witnesses under sub-section (1) he shall forthwith cause the accused to be supplied with a copy of the evidence of such witnesses

10 The accused may at any time before his trial give to the Clerk of the Crown or other officer as aforesaid a list of the persons whom he wishes to be summoned to give evidence on his trial.
 Witnesses for defence,

11 (1) All persons sent for trial to the High Court under this Act shall be tried by a Special Bench of the Court composed of three Judges
 Procedure in High Court

(2) No trial before the Special Bench shall be by jury.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges

12 No person who has been remanded to custody in the course of proceedings under this Act shall be released on bail under the provisions of section 497 of the Code of Criminal Procedure, 1893, if there appear to be sufficient grounds for further inquiry into the guilt of such person
 Bail

13 Notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused
 Special rule of evidence,

14 (1) The provisions of the Code of Criminal Procedure, 1893, shall not apply to proceedings taken under this Part in so far as they are inconsistent with the special procedure prescribed in this Part
 Procedure

(2) When holding a trial under section II, the Special Bench shall apply the provisions of Chapter XXIII of the said Code with such modifications as may appear necessary to adapt those provisions to the case of a trial before the High Court without a jury

PART II

UNLAWFUL ASSOCIATIONS

Definitions

15. In this Part—

(1) "Association" means any combination or body of persons, whether the same be known by any distinctive name or not, and

(2) "unlawful association" means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by the Governor General in Council under the powers hereby conferred

16. If the Governor-General in Council is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Governor General in Council may, by notification in the official Gazette, declare such association to be unlawful
 Power to declare association unlawful,

17 (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both

Penalties,

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both

18 An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof

THE SCHEDULE

(See section 3)

1 Any offence under the following sections of the Indian Penal Code, namely —

Chapter VI sections 121, 121 A, 122, 123 and 124

Chapter VII, sections 131 and 132

Chapter VIII, section 148

Chapter XVI, sections 302, 304, 307, 308, 326 327, 329, 332, 333, 363, 364, 365 and 368

Chapter XVII, sections 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 433, 436, 437, 438, 440, 454, 455, 457, 458, 459 and 460

Chapter XXII, section 506

2 Any offence under the Explosive Substances Act, 1908, and

3 Any attempt to commit or any abetment of any of the above offences

Statement of Objects and Reasons

Recent events have demonstrated that it is expedient to provide for the more speedy trial of anarchical offences, and for the suppression of associations dangerous to the public peace. This Bill has been prepared to meet these objects. Part I provides for the trial of certain offences by a Bench of three Judges of the High Court. In the procedure there is no formal commitment, but the case is prepared for trial by an *ex-parte* inquiry before a magistrate, and the trial is without jury. Two special provisions are made applicable to cases to which the Bill will apply. The first is that bail shall be refused so long as there is reasonable ground for further inquiry into the guilt of the accused. The second is that the evidence of witnesses who have been examined by the magistrate may be admitted at the trial if the witness is dead or cannot be produced, and the High Court has reason to believe that his death or absence was caused in the interests of the accused.

Part II provides for the suppression of unlawful associations. Such persons as are members of or in any way assist an association which encourages or aids the commitment of acts of violence or intimidation, or of which the members habitually commit such acts, are made liable to punishment, and a severe punishment is provided for persons managing or promoting such associations. Further the Governor-General in Council is empowered to declare certain associations to be unlawful, and the same penalties are provided for persons who after this declaration maintain their connection with them.

The Bill extends in the first instance to the provinces of Bengal and Eastern Bengal and Assam, and the Governor-General in Council is empowered to extend it to other provinces.

The 9th December 1908

H. ADAMSON

Notes

(1) The power of the High Court to grant bail to an accused person under s 498 of Cr. Procedure Code is untouched by the provisions of the Criminal Law Amendment Act. But in exercising its discretionary power under that section, the High Court will take into consideration the terms of s 12 of the Act, whereby the power of Courts other than the High Court and the Sessions Court, of releasing the accused on bail, given by s 497, Cr. Pro. Code have been made subject to the proviso that no person remanded to custody in the course of proceedings under the Act shall be released on bail, if there appear to be sufficient grounds for inquiry into his guilt. Taking cognizance of an offence does not involve any formal action of any kind, as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.

Reported in 14 C W N 512

(2) Where the provisions of Part I of the Act have been applied to proceedings before a Magistrate in respect of an offence, the Sessions Judge ceases to have jurisdiction to grant bail under s 498, Cr. Pro. Code, the exercise of such jurisdiction being inconsistent with the special procedure prescribed in the said Part. The proper Court to apply to for bail in such a case is the High Court, whose power to admit to bail is not affected by the Act. The District Magistrate acted improperly in not sending the records to the Sessions Judge when he called for them.

14 5 6

(3) A confession by a conspirator made to a Magistrate after arrest disclosing the existence of a conspiracy, its objects and the names of its members is not admissible under s 10 of the Evidence Act, against the co-conspirators jointly tried with him, but only under s 30 of the Act. S 10 is intended to make as evidence communications between different conspirators while the conspiracy is going on with reference to the carrying out of the conspiracy. The confession of a co-accused was not intended to be put on the same footing as a communication passing between conspirators or between conspirators and other persons with reference to the conspiracy. The evidentiary value of such a confession under s 30, is not higher than that of the statement of an accomplice and it cannot be acted upon unless corroborated by independent testimony implicating the accused in the design with which they are charged. *Emperor v Abam Bhusan Chuckerbutty* (1910) [Pallichitra Case].

38 Cal c 169

(4) It would be a dangerous principle to adopt to regard a verdict of not guilty as not fully establishing the innocence of the person to whom it relates. *R v Plummer* [1902] 2 K B 339, relied on. One was charged with conspiracy to wage war against the King under s 121A, Indian Penal Code, and acquitted. In a subsequent trial of others on an identical charge, it was held that what he said or did cannot be admitted in evidence at such trial in view of his acquittal. *Emperor v Nongopal Gupta* [1910].

Reported in 15 C W N 646

(5) Where the accused were charged with conspiracy with persons "known and unknown" — *Held*, that if the persons were "known", they should be named in the charge. Where a person has been tried for a specific offence and acquitted and he is subsequently charged with conspiracy of which that offence is alleged to form a part — *Held*, that an acquittal conclusive, and it would be a very dangerous principle to regard a judgment of not guilty as not fully establishing the innocence of the person to whom it relates. *Rex v Plummer* [1902] 2 K B 339, referred to. The course of not making completed offences the subject of a

separate trial but of throwing them into a case of conspiracy though lawful, is not to be commended. Before the testimony of an accomplice can be acted on, it must be corroborated in material particulars. There must be corroboration not only as to the crime, but also as to the identity of each one of the accused. This is no technical rule, but one founded on long judicial experience. For a conspiracy to wage war, no act or illegal omission is necessary, the agreement of two or more will suffice. While admissions, which include confessions, are by section 21 of the Evidence Act, 1872, declared relevant and may be proved as against the persons making them, all that section 30 of the Evidence Act provides is that the Court *may* take them into consideration as against other persons.

This distinction of language is significant, and shows that the Court can only treat a confession as lending assurance to other evidence against a co accused, and a conviction on the confession of a co accused alone would be bad in law. Moreover, under section 30, that only can be taken into consideration which is a confession in the true sense of the term, so that to place any reliance on a retracted confession against a co accused would be most unsafe. *Yasin v Emperor* I L R 28 Cal 689 referred to. Verification proceedings do not add any value to an approver's evidence or to confessions, and cannot be regarded as 'corroboration'. A discharge is not binding on the Court, for it is not equivalent to an acquittal. Still a discharge means that the Magistrate, after taking the evidence found that there were not sufficient grounds for committing the accused for trial. A retracted confession cannot ordinarily take the place of legal proof. Where several persons are charged with the same conspiracy, it is a legal impossibility that some should be found guilty of one conspiracy and some of another, and any accused not shown to be a member of that conspiracy is entitled to demand an acquittal.

559 *Emperor v Lalit Mohan Chuckerbutty and others* (1911) 38 Cal

STATEMENT OF OBJECTS AND REASONS.

PUBLISHED WITH THE BILL

The continued recurrence of murderous outrages has shown that the measures which have hitherto been taken to deal with anarchy and sedition require strengthening and that the real source of the evil has not as yet been touched. Since 1907, the policy of the Government has been directed to the steady enforcement of the ordinary law against sedition. Prosecutions have invariably proved successful but have produced no permanent improvement in the tone of the Press, a certain section of which has continued, both by openly seditious writing and by suggestion and veiled incitement, to inculcate hostility to British rule. There is no lack of evidence that the series of crimes which preceded and have followed the passing of Act VII of 1908 is directly traceable to these influences, to which the authors of the outrages—young men of the educated middle class—are peculiarly susceptible. This propaganda has been carried on not only by means of newspapers but by leaflets, pamphlets and the like, rendering it necessary to assume control over printing-presses as well as newspapers.

2 The main divisions of the Bill which has been prepared with this object are—

(I) Control over presses and means of publication, (II) control over publishers, (III) control over the importation into British India and the transmission by the post of objectionable matter, (IV) the suppression of seditious or objectionable newspapers, books or other documents wherever found

3 I The first of these objects it is sought to attain as follows —

- (1) all proprietors of printing-presses making a declaration for the first time under section 4 of the Press and Registration of Books Act, 1867, will be required to give security, which may, however, be dispensed with by the Magistrate at his discretion. The proprietors of existing presses will be required to give security only if and when they are guilty of printing objectionable matter of the description to which the Act applies,
- (2) Local Governments may declare such security forfeit where it appears to them that the press has been used for printing or publishing objectionable matter. The Bill defines such matter as that calculated—
 - (a) to incite to murder, to anarchical outrage by means of explosives, or to acts of violence,
 - (b) to tamper with the loyalty of the Army or Navy;
 - (c) to excite racial class or religious animosities, or hatred or contempt of the Government of British India or of any Native State or Prince,
 - (d) to incite to criminal intimidation,
 - (e) to incite to interference with the administration of the law or with the maintenance of law and order,
 - (f) to intimidate public servants by threat of injury to them or to those in whom they are interested

The declaration of forfeiture operates to annul the declaration made under the Press and Registration of Books Act, 1867

When the initial security so deposited has thus been forfeited, the deposit of further security in a larger sum is required before a fresh declaration can be made under section 4 of the Press and Registration of Books Act of 1867, and if thereafter the press is again used for printing or publishing objectionable matter the further security deposited and the press itself may be declared forfeit

II Control over publishers of newspapers, the second main object of the Bill, is provided for in a similar manner. The keeping of a printing-press and the publishing of a newspaper without depositing security when required are punishable with the penalties prescribed for failure to make the declarations required by sections 4 and 5 of the Press and Registration of Books Act, 1867

III. The more efficient control over the importation and transmission by post of objectionable matter of the kind described in the Bill is given by empowering the customs and post office authorities to detain and examine packages suspected of containing such matter, and to submit them for the orders of the Local Government. The Bill further prohibits the transmission by post of any newspaper in respect of which a declaration has not been made under the Press and Registration of Books Act, 1867, and security deposited as required under this Bill, and empowers postal officials to open and deliver to the proper authorities articles in the course of transmission which are suspected of containing such newspapers

IV The fourth object of the Bill is attained by authorizing the Local Government to declare forfeit any newspaper, book or other document which appears to it to contain matter of the prohibited description, and upon such a declaration the Bill empowers the police to seize such articles and to search for the same

In each case the Local Government is the authority authorized to declare forfeiture, but a check is imposed upon the exercise of this power in that the Bill provides for an application, within two months of the date of such declaration to a special bench of three Judges of the High Court, on the question of fact whether the matter objected to is or is not of the description defined in the Bill. If the High Court finds that it is not of that description, it must cancel the order of forfeiture

All other legal proceedings for action taken under the Bill are barred

Subsidiary matters provided for in the Bill are the search for and seizure under special warrant of the Magistrate of property declared forfeit under the Bill, for the submission by the printer of every newspaper to such officer as the Local Government may direct of two copies of each issue of his paper on pain of a penalty of Rs 50 for each default, the return of security deposited by a printer or a publisher, when such person ceases to keep a printing-press or, being a publisher, makes a declaration under section 8 of the Press and Registration of Books Act of 1867, and lastly the saving of prosecutions under any other law

The 3rd February 1910

H. F. RISLEY

The following report of the Select Committee on the Bill to provide for the better control of the Press, was presented to the Council of the

Governor-General of India for the purpose of making Laws and Regulations on the 8th February, 1910 —

We, the undersigned, Members of the Select Committee to which the Bill to provide for the control of the Press was referred, have considered the Bill and have now the honour to submit this our report, with the Bill as amended by us annexed thereto

2 *Clause 2*—We have considered it necessary to insert a special definition of “High Court” as the definition in s 3(24) of the General clauses Act, 1897, is not suitable for the provinces of Coorg and Ajmere-Merwara where the Chief Commissioner who is the Local Government is also the High Court. We have therefore provided that in the case of these two provinces the “High Court” shall mean the High Court at Madras and the High Court for the North-Western Provinces, respectively

3 *Clause 3 (1) and 8 (1)*—In the case of a keeper of a press or publisher starting business after the commencement of this Act we have reduced the maximum amount of the security from Rs 5,000 to Rs 2,000 as we think that the larger amount might prove excessive in the case of well-intentioned printers and publishers of small means

4 *Clause 4 (1)*—In sub-clause (c) we have substituted the words “the administration of justice in British India” for the words “any lawful authority” and we have struck out from this sub-clause the words “or antipathy between members of different races, castes, classes, religions or sects” and inserted in it words to make it include the bringing into hatred or contempt of any class or section of His Majesty’s subjects in British India, as we are disposed to think that the clause as thus altered will be sufficient to carry out the purpose in view

5 *Clauses 3, 5 8, and 10*—We have expressly provided that the deposit required under the Act may be made either in money or the equivalent thereof in securities of the Government of India

6 *Clause 14*—We have slightly modified this clause so as to make it clear that it applies only to newspapers printed and published in British India

7 *Clause 15*—This clause as introduced proposed to empower postal officers to open any article in course of transit by post. We do not consider it necessary that postal officers should have this power. Nor do we think that they should have power to detain letters or parcels. We have therefore modified this clause by providing that such officers should have power only to detain articles other than letters or parcels and deliver them to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct

Clauses 18 and 19—We have considered it necessary to provide for cases where the Special Bench may consist of two Judges who may be divided in opinion, we have provided that in such cases the order of forfeiture made by the Local Government shall stand

9 The other alterations which we have made in the Bill are of a formal nature and call for no special remarks

10 The Bill was published in the Gazette of India in English on the 5th February, 1910

11 We think that the measure has not been so altered as to require re-publication and we recommend that it be passed as now amended

Sd H H Risley, S P Sinha, H A Stuart, G H B Kenrick;
H O Qunn, P C Lyon, G K Gokhale, Bijay Chand Mahtab, Zulfikar Ali
Khan, R. N Mudholkar, C W. N. Graham.

NOTE OF DISSSENT.

We sign the Report subject to the following minute of dissent We think that the existing law is sufficient to punish actual seditious as also to deal effectively with incitements to violence But in view of the exceptional situation in several parts of the country, we are constrained to admit the necessity of strengthening the hands of the executive in preventing the spread of seditious teachings And we assent, though not without great reluctance, to the principle of providing a certain amount of executive control at initial stages over printing-presses and newspapers to prevent serious abuses of the liberty of the Press We cannot shut our eyes to the risks which must accompany such a provision But it is a choice between two evils, and we accept what we consider to be the lesser evil of the two We, however, think that such exceptional legislation should not form part of the permanent Statute-book of the country, and we strongly urge that the measure should remain in force for a limited period only, say, three years Moreover, even conceding the principle mentioned above for preventive purposes, we consider that some of the provisions of the proposed Bill are far too drastic and go beyond the requirement of the situation In particular we urge that two provisions should be modified The Bill lays down that the keeper of every new printing-press and the publisher of every new newspaper shall, at the time of making a declaration under the Press and Registration of Books Act of 1867, ordinarily deposit a security, the Magistrate being empowered to dispense in exceptional cases with the deposit of such security We think that this should be reversed—that ordinarily no security should be required, but the Magistrate should be empowered to demand the deposit of a security in cases in which in his opinion there are reasonable grounds to believe that the press or the newspaper is intended or is likely to be used, for any of the purposes described in section 4, sub section (1) This will prevent an unnecessary financial burden (which in the case of small concerns might prove a serious burden) being imposed on well-intentioned printers and publishers and will at the same time meet the case of old offenders reappearing under new names or new garbs We also think that where a Local Government has issued a notice of forfeiture of security, the annulment of the declaration should not take place till after the application to the High Court, if made, has been decided

Sd G K GOKHALE, R N MUDHOLKAR

I regret I cannot join with the majority of my colleagues in the recommendation that the Bill as amended should be passed In my humble opinion the important nature of the legislation proposed demands that both the members of this Council and the public should have more time to consider the Bill and to express their opinions regarding it The object of

the Bill is to prevent Printing-presses and newspapers being used to promote seditious or other criminal purposes. Section 108 of the Code of Criminal Procedure (Act v of 1898) empowers a Chief Presidency or a District-Magistrate, with the previous sanction of the Governor-General in Council or the Local Government, to require any editor, printer, proprietor or publisher of any publication registered under, or printed or published in conformity with the rules laid down in the Press and Registration of Books Acts, 1867, who disseminates or attempts to disseminate or in any way abets the dissemination of any seditious matter, that is to say any matter, the publication of which is punishable under section 124A of the Indian Penal Code, or any matter concerning a judge which amounts to criminal intimidation or defamation under the Penal Code, to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour. Act VII of 1908 has made stronger provision for the prevention of incitements to murder and to other offences in newspapers, which include an attachment and forfeiture of the press at which the offending matter may be published.

If notwithstanding these enactments, deplorable circumstances have come to exist in some parts of the country and it has become necessary that the existing provisions of the law relating to printing presses and newspapers should be strengthened to enable the Government to more effectively prevent them from being used to promote sedition or other crime, it is our duty to support and I am fully prepared to support the provisions of the Bill, which relate to the demand of security, provided it is asked for from printers or publishers who have offended against the law relating to the State, and in view of the present state of the country even from persons in whose case the Magistrate may have reasonable grounds for believing that they are likely to use the press or the newspaper which they wish to start for the wicked purpose of fostering sedition or other crime. This object could to my mind be gained by amending the Criminal Procedure Code. But so far as the Bill seeks to do this, I am prepared to support it. But I regret I do not see any justification for the important departure which the Bill seeks to make in laying down that the order demanding security, or forfeiting it, or forfeiting the printing press, etc., of an offending printer or publisher, shall be made, not as heretofore, both under section 108 of the Criminal Procedure Code and under the Newspapers (Incitements to Offences) Act by the Magistrate after giving an opportunity to the person against whom the order is to be made, but by the Local Government, upon a mere perusal of the matter which he may have published. I think that when a Local Government is of opinion that a security should be demanded from the keeper of a press or the publisher of a newspaper, it should direct the Magistrate within whose jurisdiction the press is situated or the paper is published, to call on such keeper or publisher to show cause why he should not be ordered to deposit such security within the limits prescribed by the Bill, as the Magistrate may think fit to fix, and it should be left to the said Magistrate upon good cause not being shown to order the security to be deposited. The power to declare a security forfeited should similarly be left to the Magistrate.

The order of the Magistrate will in either case be a judicial order, and an appeal should be permitted to the High Court as is provided under Act VII of 1908. But even if section 17 of the Bill is allowed to stand as it is providing for an application to the High Court to revise an order passed

for forfeiture of security,—a similar provision for revision should be made in regard to an order for deposit of security also,—it will preserve what exists at present of an entirely reasonable separation between Judicial and Executive functions, and will give a greater assurance to the general public of a fair consideration of the merits of the order, when it is the order of a Magistrate which is brought before a High Court for a revision, than when it is an order passed by a Local Government. The principle involved in the departure which the Bill makes from the laws enacted by the Government of India for over half a century, is of great importance. It raises a political question, to quote the weighty words of Mr Gladstone, uttered in the House of Commons in connection with the Vernacular Press Act of 1878, “of the utmost delicacy, namely, whether it is wise for the Government to take into its own hands, and out of the established legal jurisdiction, the power of determining what writing is seditious, and what is not.” If the amendment I have suggested is accepted this departure will be avoided and the powers which the Bill gives to the Government for exercising a more effective control over the Press will not in the least be diminished.

I think that the provisions of the Bill are in some other respects, also wider and more drastic than they need be, but they are covered by the amendments I propose to put forward, and I need not therefore note them in detail here.

I fear that if the Bill is passed as it stands at present it is likely to affect injuriously the perfectly legitimate liberty of expression of the unexceptionable section of the Press also, and if this should appear, it will be a misfortune both for the people and the Government. The Bill is an exceptionable measure, and its operation should, at any rate, not be extended to all parts of the country at once but should be confined to those parts where a necessity for it may be found to exist. Its duration also should be confined to a period of three years.

The 7th February, 1910

MADAN MOHAN MALAVIYA

ACT No I OF 1910

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th February 1910).

An Act to provide for the better control of the Press

Whereas it is necessary to provide for the better control of the Press; It is hereby enacted as follows —

Short title and extent 1 (1) This Act may be called the Indian Press Act, 1910

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Sipit.

2 In this Act, unless there is anything repugnant in the subject or context,—

Definitions

(a) “book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed,

- (b) "document" includes also any painting, drawing or photograph or other visible representation
- (c) "High Court" means the Highest Civil Court of Appeal for any local area except in the case of the provinces of Ajmer-Merwara and Coorg where it means the High Court of Judicature for the North-Western Provinces and the High Court of Judicature at Madras respectively
- (d) "Magistrate" means a District Magistrate or Chief Presidency Magistrate
- (e) "newspaper" means any periodical work containing public news and
- (f) "printing-press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing

3 (1) Every person keeping a printing-press who is required to make
Deposit of security by a declaration under section 4 of the Press and
keepers of printing presses Registration of Books Act, 1867, shall at the
 time of making the same, deposit with the Magistrate before whom the
 declaration is made security to such an amount, not being less than five
 hundred or more than two thousand rupees, as the Magistrate may in each
 case think fit to require, in money or the equivalent thereof in securities
 of the Government of India

Provided that the Magistrate may, if he thinks fit, for special reasons to
 be recorded by him, dispense with the deposit of any security or may from
 time to time cancel or vary any order under this sub-section

(2) Whenever it appears to the Local Government that any printing-
 press kept in any place in the territories under its administration, in
 respect of which a declaration was made prior to the commencement of this
 Act under section 4 of the Press and Registration of Books Act, 1867, is
 used for any of the purposes described in section 4, sub-section (1), the
 Local Government may, by notice in writing, require the keeper of such
 press to deposit with the Magistrate within whose jurisdiction the press
 is situated security to such an amount, not being less than five hundred
 or more than five thousand rupees, as the Local Government may think
 fit to require, in money or the equivalent thereof in securities of the
 Government of India

4 (1) Whenever it appears to the Local Government that any printing-
Power to declare security press in respect of which any security has been
forfeited in certain cases deposited as required by section 3 is used for
 the purpose of printing or publishing any newspaper, book or other docu-
 ment containing any words, signs or visible representations which are
 likely or may have a tendency, directly or indirectly, whether by inference,
 suggestion, allusion, metaphor, implication or otherwise—

- (a) to incite to murder or to any offence under the Explosive Sub-
 stances Act, 1908, or to any act of violence, or
- (b) to seduce any officer, soldier or sailor in the Army or Navy of
 His Majesty from his allegiance or his duty, or

- (c) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any Native Prince or Chief under the suzerainty of His Majesty, or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government or any such Prince or Chief or
- (d) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or
- (e) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or
- (f) to convey any threat of injury to a public servant, or to any person in whom that public servant is believed to be interested, with a view to inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of his public functions,

the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above, declare the security deposited in respect of such press and all copies of such newspaper, book or other document wherever found to be forfeited to His Majesty

Explanation I—In clause (c) the expression “disaffection” includes disloyalty and all feelings of enmity

Explanation II—Comments expressing disapproval of the measures of the Government or of any such Native Prince or Chief as aforesaid with a view to obtain then alteration by lawful means, or of the administrative or other action of the Government or of any such Native Prince or Chief or of the administration of justice in British India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (c)

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled

5 Where the security given in respect of any press has been declared forfeited under section 4, every person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall deposit with the Magistrate before whom such declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India

6 If after such further security has been deposited the printing-press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which in the opinion of the Local Government are of the

nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing such words, signs or visible representations, declare—

- (a) the further security so deposited,
- (b) the printing press used for the purpose of printing or publishing such newspaper, book or other document, or found in or upon the premises where such newspaper, book or other document is, or at the time of printing the matter complained of was, printed, and
- (c) all copies of such, newspaper, book or other document wherever found,

to be forfeited to His Majesty

7. (1) Where any printing-press is or any copies of any newspaper, book or other document are declared forfeited to his Majesty under this Act, the Local Government may direct any Magistrate to issue a warrant empowering any police-officer, not below the rank of a Sub-Inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

(1) where any such property may be or may be reasonably suspected to be, or

(ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898

8 (1) Every publisher of a newspaper who is required to make a declaration under section 5 of the Press and Registration of Books Act, 1867, shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India,

Provided that if the person registered under the said Act as printer of the newspaper is also registered as the keeper of the press where the newspaper is printed, the publisher shall not be required to deposit security so long as such registration is in force

Provided further that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section

(2) Whenever it appears to the Local Government that a newspaper published within its territories, in respect of which a declaration was made by the publisher thereof prior to the commencement of this Act, under section 5 of the Press and Registration of Books Act, 1867, contains any words, signs or visible representations of the nature described in section 4 sub-section (1), the Local Government may, by notice in writing, require the publisher to deposit with the Magistrate, within whose jurisdiction the newspaper is published security to such an amount, not being less than five

hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India

9 (1) If any newspaper in respect of which any security has been deposited as required by section 8 contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare such security and all copies of such newspaper, wherever found, to be forfeited to His Majesty

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled

10. Where the security given in respect of any newspaper is declared forfeited, any person making a fresh declaration under section 5 of the Press and Registration of Books Act, 1867, as publisher of such newspaper, or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India,

11 If after such further security has been deposited the newspaper again contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited, and

(b) all copies of such newspaper wherever found, to be forfeited to His Majesty

12. (1) Where any newspaper, book or other document wherever printed appears to the Local Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found, and any Magistrate may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where the newspaper, book or other document may be or may be reasonably suspected to be

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898.

13 The Chief Customs-officer or other officer authorized by the Local Government in this behalf may detain any package brought, whether by land or sea, into British India which he suspects to contain any newspapers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct

14 No newspaper printed and published in British India shall be transmitted by post unless the printer and publisher have made a declaration under section 5 of the Press and Registration of Books Act, 1867, and the publisher has deposited security when so required under this Act

15 Any officer in charge of a post-office or authorised by the Post-Master General in this behalf may detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

(a) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1), or

(b) any newspaper in respect of which the declaration required by section 5 of the Press and Registration of Books Act, 1867, has not been made, or the security required by this Act has not been deposited by the publisher thereof,

and shall deliver all such articles to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct

16 (1) The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published

(2) If any printer of any such newspaper neglects to deliver copies of the same in compliance with sub-section (1), he shall, on the complaint of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default.

17 Any person having an interest in any property in respect of which an order of forfeiture has been made under section 4, 6, 9, 11 or 12 may, within two months from the date of such order, apply to the High Court

to set aside such order on the ground that the newspaper, book or other document in respect of which the order was made did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1)

18 Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges or where the High Court consists of less than three Judges, of all the Judges

19 (1) If it appears to the Special Bench that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order of forfeiture

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority (if any) of those Judges

(3) Where there is no such majority which concurs in setting aside the order in question, such order shall stand

20 On the hearing of any such application with reference to any newspaper, any copy of such newspaper published after commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper which are alleged to be of the nature described in section 4, sub-section (1)

21. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the cost thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications

22 Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on such application as aforesaid, and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act

23 (1) Whoever keeps in his possession a press for the printing of books or papers without making a deposit under section 35 or section, when required so to do, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Press and Registration of Books Act, 1867

24 Where any person has deposited any security under this Act and ceases to keep the press in respect of which such security was deposited, or, being a publisher, makes a declaration under section 8 of the Press and Registration of Books Act, 1867, he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security, and thereupon such security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person

25 Every notice under this Act shall be sent to a Magistrate, who shall cause it to be served in the manner provided for the service of summonses under the Code of Criminal Procedure, 1898

26 Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act

Operation of other laws not barred

NOTES

(1) *Sections 3, 23 (2)*—The Government of Bombay, on the 13th September 1912, issued to the applicant a notice calling upon him under s 3 sub s (2), of the Indian Press Act, 1910 to deposit with the District Magistrate of Kaira security to the amount of Rs 3,000. It was served on the applicant on the afternoon of the 28th September. On the 30th idem, which was a Monday, the applicant sent off by post letters to His Excellency the Governor and to the District Magistrate of Kaira, stating that he had closed down the press. On the 2nd October, the applicant sold the press, and had his declaration in respect of the press cancelled the next day. On the 5th October, proceedings were taken against the applicant, under s 23 (1) of the Act, for keeping the press without making the deposit. He was convicted of the offence. The applicant having applied to the High Court *Held*, that no limit of time having been given to the applicant within which to make the deposit ordered, the notice under s 3 of the Indian Press Act, 1910, must be construed as meaning that the deposit ordered should be made within a reasonable time. *Held*, also, that the interval which elapsed between the afternoon of the 28th September and the 3rd October could not be reckoned as an unreasonable time.

Emperor v. Fulechund Bapuji

37 Bom 555

(?) *Sections 4 (1) 20*—It is not necessary that the particular passage objected to in an article should be specified in the notice issued by the Local Government under s 4 (1) of the Indian Press Act, that an account or the voyage and adventures of the "Komigiti Mau" and of the Budge Budge not, so inaccurate, so misleading and so unfavourable to the Government as to be likely, apart from all "comments" to excite hatred, contempt or disaffection, does not fall within the exception embodied in explanation II of s 4 (1) of the Act, that certain articles from other issues of the newspaper concerned, put forward by the applicant, were only admissible for the purpose specified in s 20 of the Act viz., "in aid of the proof of the nature and tendency" of the article of 6th October referred to in the Government notice of forfeiture (*vide* (4) below), that although the hatred and contempt or disaffection likely to be excited must be shown to be against the *Indian Government* and not against the Canadian authorities or the Governor of Hong Kong, the alleged conduct of those authorities was made use of in such a way as to make the inaccurate and unfavourable statement of that conduct relevant in this case. (Feb 1915)

Amar Singh—Petitioner, v Crown—Respondent

P R 1915, 15 C1

(3) *Section 4 (1) (c)*—A notice of forfeiture by the Government specifying certain letters and communications purporting to come from H C Mujim of Rawalpindi and entitled or headed *Personal Rule*, *Personal Rule II* and *Personal Rule III* (published in certain issues of the newspaper concerned), as being of the nature described in section 4 (1) (c) of the Indian Press Act, complied sufficiently with the terms of section 9 of the Act and was not open to objection on the ground that it did not set out expressly selected words or passages from the three letters or communications referred to. The words in section 4 (1) (c) the "Government established by law in British India" include Local Governments as well as the Government of India, and that Local Government includes a Chief Commissioner *vid* General Clauses Act, 1897, Section 3 (21) and (29). That inasmuch as the letters or communications in question teemed with passages which were likely or "might" have a tendency to bring into hatred or contempt the Government established by law in the North West Frontier Province within the terms of section 4 (1) (c) the Court was not in these proceedings concerned with the question whether the statements were true or false.

Lali Karam Chand v Crown

C1 P R No 14

(4) *Section 4*—Following 14 P R (C1) 1913 (2) above—(1) that the term Government established by law in British India as used in s 4 of the Press Act includes a Local Government, that the Court was not concerned with the motives for writing the articles in question. Whether the articles were likely to bring Government into hatred or contempt or to excite hatred or contempt or to excite hatred or contempt against the Christian subjects of His Majesty in India, *Held further*, that no amount of professed loyalty on other occasions could be taken as nullifying the probable effects of the

writing contained in the article concerned and that the applicant had entirely failed to prove that Government had established no case for forfeiture

Ghulam Kader Lha v Crown (Zamindar Press case) C P & 1914 No 27

(5) *Sections 4, 12, 17 and 19*—On an application under the Indian Press Act, 1910, to set aside the order of forfeiture of a pamphlet made by the Local Government,—*Held*, that the onus was cast on the petitioner to establish that it was impossible for the pamphlet to come within the terms of s 4 of the Act and that the functions of the High Court were limited under Sections 17 and 19 to considering whether the petitioner had discharged that onus. The High Court had no jurisdiction to pronounce on the wisdom or unwisdom of the order of forfeiture

The direction in s 12 of the Act ("stating the ground of its opinions") was mandatory, and it was not a compliance with the direction merely to cite the words of the section invoked without setting out facts on which the opinion was based but the High Court was debarred by s 22 from questioning the legality of the forfeiture on that ground. In an enquiry under this Act, the question of the intention of the writer or publisher is not directly material

Per Stephen J—The omission of the Local Government to comply with the mandatory direction contained in s 12 did not oust the jurisdiction of the High Court to revise the order of forfeiture on its merits

In re Mahomed Ali

41 Cal 460

(6) *Section 8*—The petitioner is the declared proprietor of the press and the declared printer and publisher of a weekly Persian Journal that is issued under the name of "Habul Matin." Since the Italo-Turkish war and the Balkan war the petitioner has been issuing what are described as daily supplementary editions of the Persian Journal in Bengali and Urdu and for such production from his press as well as for any English edition that may hereafter be issued he has been ordered by the Chief Presidency Magistrate to furnish security in the sum of Rs 1,500. Against that order the petitioner moved this Court and obtained this Rule. On further examining the law on the subject we find that the order complained of could have been passed under section 8 of the Indian Press Act (I of 1910) only and the learned Advocate-General who appears for the Crown, urges that it was so, though the Chief Presidency Magistrate has not in express terms stated the section or the Act under which the order was made. In our view of the law an order passed under section 8 of Act I of 1910 is not-revisable by this Court. This rule therefore must be discharged for that reason.

Habul Matin. Reported in 17 C W N, 1246

(7) *Section 7*—When the language of an Act is plain and admits but of one meaning it must be enforced and that the Courts are not concerned with any question of the reasonableness of the enactment or of the policy or possible intention of the legislature. That limitation for an application under s 17 of the Act starts from the date of the order of forfeiture, and that the provisions of s 5 of the Limitation Act are not applicable to such an application.

Abdul Haq v Crown, (Rifa'i am case)

No 16 Cr P R 1914

(8) *Held*, that it had not been shown that the Government order was wrong on the merits, further that the Court had no authority under s. 19 to reduce the penalty, without setting aside the order of forfeiture

Ghulam Kadir Khan v. Crown Respondent

P R 1914, 28 Cr.

Statement of Objects and Reasons, published with the Bill

1 The Prevention of Seditious Meetings Act, 1907, which was continued by the Continuing Act 1910, until the thirty-first day of March 1914, will expire on the last-named date unless further continued. It is now deemed advisable, instead of merely continuing or making permanent the existing Act, to introduce a Bill to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause disturbance of public tranquility.

2 The following are the main points in respect of which the provisions of the Bill differ from those of the existing Act —

Section 2 — Notifications of proclaimed areas and the making of further notifications are to be subject to the previous sanction of the Governor-General in Council.

Section 3 — Clause (3) of this section is omitted.

Section 4 (1) The words “or of any political subject” are omitted.
Section 4 (1), (a) and (b) — The words “District Magistrate” are substituted for the words “District Superintendent of Police.”

Section 4 (2) — The words “The District Magistrate” or any Magistrate of the first class authorised by the District Magistrate in this behalf” are substituted for the words “Any officer of Police, not below the rank of an Inspector.”

Section 7 — The word “or on any political subject” are omitted.

The 14th March 1911

J L JENKINS

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquility was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 20th March 1911 —

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquility was referred, have considered the Bill and have now the honour to submit this our Report,* with the Bill as amended by us annexed thereto. The amendments which we have suggested are explained below.

2 *Clause I, sub-clause (2)* — At present a notification under this sub-clause must extend to a whole province. We have inserted the words “or parts of provinces” in order to enable the Government of India to limit future notifications to such parts of provinces as they may think fit.

3 *Clause 4, sub-clause (2)* — We have inserted words limiting the police-officers who may be deputed to attend meetings such as are not below the rank of Head Constable.

4 *Clause 8* is new. We think that offences against the proposed Act should be triable only by a Presidency Magistrate or a Magistrate of the first class or Sub-divisional Magistrate.

5 The addition of a clause limiting the duration of the proposed Act was suggested by certain of our number, but as a majority of us were unable to accept this suggestion, it has not been adopted.

(Sd) J L Jenkins, Syed Ali Imam, B C Mahtab, M Haque, Syed Shamsul Huda, M B Dadabhoy, Partab Singh, Abdul Majid, J Andrew, H O Quin, F A T Philips, J M Holms, A Earle, H S P Davies, H Le Mesurier

The 18th March, 1911

Note of dissent

We regret the decision of the Government to re-enact this legislation and place it permanently on the Statute-book of this country. The only justification for such measures is the prevalence of an exceptional state of things, and happily that justification no longer exists. The highest authorities have freely admitted that a vast improvement has taken place in the general situation of the country, and in our opinion, the best policy to pursue at this juncture is to let things return to their normal condition as quietly as possible. We recognise that some of the more objectionable features of the Act of 1907 have been removed in the present Bill, but it is proposed now to make the measure permanent and we find ourselves unable to assent to this course.

Sd G K. Gokhale, Bhupendia Nath Basu, M. Haque, R N Mudholkar

18th March, 1911

ACT NO X OF 1911

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 22nd March 1911)

An Act to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity

Whereas it is expedient to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity, It is hereby enacted as follows —

Short title and extent 1 (1) This Act may be called the Prevention of Seditious Meetings Act, 1911

(2) It extends to the whole of British India, but shall have operation only in such Provinces or parts of Provinces as the Governor General in Council may from time to time notify in the Gazette of India

2 (1) The Local Government may, with the previous sanction of the Governor General in Council, by notification in the Local Official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government, with the previous sanction of the Governor General in Council, from making any further notifications in respect of the same area from time to time as it may think fit

3 (1) In this Act the expression ' public meeting ' means a meeting
 Definition which is open to the public or any class or portion of the public

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

4 (1) No public meeting for the furtherance or discussion of any
 Notice to be given of public subject likely to cause disturbance or public meetings excitement or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously, or

(b) unless permission to hold such meeting has been obtained in writing from the Magistrate or the Commissioner of Police, as the case may be

(2) The District Magistrate or any Magistrate of the first class authorised by the District Magistrate in this behalf
 Power of Magistrate to cause report to be taken may, by order in writing, depute one or more Police officers, not being below the rank of head constable, or other persons to any such meeting for the purpose of causing a report to be taken of the proceedings

(3) Nothing in this section will apply to any public meeting held under any statutory or other express legal authority or to public meetings convened by a Sheriff
 Exception or to any public meetings or class of public meetings exempted for that purpose by the Local Government by general or special order

5 The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of which public notice shall forthwith be given,
 Power to prohibit public meetings prohibit any public meeting in a proclaimed area, if in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity

6 (1) Any person concerned in the promotion or conduct of a public meeting held in proclaimed area contrary to the provisions of sections 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both
 Penalties

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898

7 Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both

8 No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class or Sub-divisional Magistrate shall try any offence against this Act

9 The Prevention of Seditious Meetings Act, 1907, and the Continuing Act, 1910, are hereby repealed

CRIMINAL LAW AMENDMENT ACT, 1913

Statement of Objects and Reasons, published with the Bill

The sections of the Indian Penal Code which deal directly with the subject of conspiracy are those contained in Chapter V and section 121A of that Code. Under the latter provision it is an offence to conspire to commit any of the offences punishable by section 121 of the Indian Penal Code or to conspire to deprive the King of the sovereignty of British India or of any part thereof or to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government and to constitute a conspiracy under this section it is not necessary that any act or illegal omission should take place in pursuance thereof. Under section 107 abetment includes the engaging with one or more person or persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing. In other words, except in respect of the offences particularized in section 121A, conspiracy *per se* is not an offence under the Indian Penal Code.

On the other hand by the common law of England if two or more persons agree together to do any thing contrary to law or to use unlawful means in the carrying out of an object not otherwise unlawful the person who so agree commit the offence of conspiracy. In other words conspiracy in England may be defined as an agreement of two or more persons to do an unlawful Act or to do a lawful act by unlawful means, and the parties to such a conspiracy are liable to indictment.

Experience has shown that dangerous conspiracies are entered into in India which have for their object aims other than the commission of the offences specified in section 121A of the Indian Penal Code and that existing law is inadequate to deal with modern conditions. The present Bill is designed to assimilate the provisions of the Indian Penal Code to those of the English law with the additional safeguard that in the case of a conspiracy other than a conspiracy to commit an offence, some overt act is necessary to bring the conspiracy within the purview of the criminal law. The Bill makes criminal conspiracy a substantive offence, and when such a conspiracy is to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, and no

express provision is made in the Code provides a punishment of the same nature as that which might be awarded for the abetment of such an offence. In all other cases of criminal conspiracy the punishment contemplated is imprisonment of either description for a term not exceeding six months or with fine or with both.

The 26th February 1913.

R H CRADDOCK

The following Report of the Select Committee on the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 11th March 1913

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, was referred, have considered the Bill and have now the honour to submit this our Report with the Bill as amended by us annexed thereto

2 In order to avoid any possible danger of the provisions of the Bill being misused, we have added two new clauses. The first of these provides for cases of criminal conspiracy to commit offences referred to in section 195 of the Code of Criminal Procedure, 1898, and requires the same sanction for prosecutions or conspiracies to commit such offences as is required for prosecutions for the offences themselves

3 The second clause provides that no Court shall take cognizance of any criminal conspiracy to commit certain offences specified in section 196 of the Code of Criminal Procedure, 1898, or to commit illegal acts which are not offences or to effect legal objects by illegal means save upon complaint made by or under the authority of the Governor General in Council, the Local Government or some officer empowered by the Governor General in Council in that behalf

4 It further provides that courts shall not take cognizance of criminal conspiracies to commit non-cognizable offences or cognizable offences punishable with less than two years' rigorous imprisonment without the consent in writing of the Local Government or of a District Magistrate or Chief Presidency Magistrate empowered in this behalf by the Local Government

5 We think that these safeguards will satisfactorily ensure that the provisions of the Bill will only be used when prosecutions are necessary in the public interest

6 We have amended the Schedule so as to make it clear that no case of criminal conspiracy is to be tried by any Magistrate other than a Presidency Magistrate or Magistrate of the 1st class

7 We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended

Sd Syed Ali Imam, R H Craddock, Gopal Saran Singh, A M Monteath, G M Chitnavis, F C Ebrahim, P Rama Rayaningar, M M. Malaviya,* W H Vincent; H Wheeler; G H B Kenrick, C H Kesteven, A Meredith, J Walker, D B Blakeway, M. S Das, R Sinha

The 10th March, 1913

Note of Dissent

This Bill has been introduced and is being dealt with as an emergent measure. Its scope should, therefore, in my opinion, be limited to offences which require emergency to be provided against, but as the Bill stands it is extremely comprehensive. The word "illegal" used in the definition of a criminal conspiracy is as it is defined in the Indian Penal Code, "applicable to everything which is an offence, or which is prohibited by law or which furnishes ground for a civil action." This definition would make even a case of civil trespass indictable as a criminal conspiracy and would thus go beyond the law as it prevails in England.

It is true that in England indictments for conspiracy extend to almost every possible sort of case, but in India section 121A of the Indian Penal Code has hitherto been the only one section which renders punishable a mere conspiracy to do an illegal act which does not go beyond a conspiracy. In view of the special circumstances of the present situation, I am prepared to support the Bill as amended so far as it extends the law of conspiracy to specified grave offences to which in the opinion of the Government its extension may be necessary to enable the Government effectually to prevent and punish criminal conspiracies directed against the State, or the object of which is to commit murder or dacoity or similar grave crimes, but the proposal so to extend the law of conspiracy that it should cover every criminal offence, everything which is prohibited by law and every cause which furnishes ground for a civil action, stands on a very different footing. It has not been urged that such an extension is a matter of pressing necessity. The pros and cons of it call for further deliberation and more detailed examination. Such a proposal should therefore, be dealt with in the ordinary and regular way by a Bill embodying it being circulated for opinion among the judicial and executive officers of Government and representative public men and bodies and should be considered in the light of the opinions so gathered. To carry this part of the Bill through along with an emergent piece of legislation seems to me to be open to grave objection.

10th March 1913

MADAN MOHAN MALAVIYA

ACT No. VIII OF 1913

(Received the assent of the Governor-General on the 27th March 1913.)

An Act further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898. It is hereby enacted as follows —

Short title,

1 This Act may be called the Criminal Law Amendment Act, 1913

2 In section 40 of the Indian Penal Code, after the word and figures "Chapter IV" the word, figure and letter "Chapter VA" shall be inserted

Amendment of section 40,
Indian Penal Code

Insertion of new Chapter
in the Indian Penal Code

3 After Chapter V of the said Code, the following Chapter shall be inserted, namely —

“CHAPTER VA”

CRIMINAL CONSPIRACY

Definition of Criminal
conspiracy

120A When two or more persons agree to do, or cause to be done —

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof

Explanation — It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object

120B (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both”

4 In section 195, sub-section (3), of the Code of Criminal Procedure, 1898, before the words “the abetment”, the words “criminal conspiracies to commit such offences and to” shall be inserted

5 After section 196 of the Code (of Criminal Procedure, 1898), the following section shall be inserted, namely —

“196A No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code

Prosecution for certain
classes of criminal conspiracy

- (1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order under authority from the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf, or
- (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards unless the Local Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of the proceedings

Provided that where the criminal conspiracy is one to which the provisions of sub-section (3) of section 195 apply no such consent shall be necessary

6 In Schedule II of the Code (of Criminal Procedure, 1898), after the Amendment of Schedule II of the Code of Criminal Procedure, 1898

entries relating to Chapter V, the entries contained in the Schedule hereto annexed shall be inserted.

SCHEDULE.

"CHAPTER VA"

Criminal Conspiracy

1	2	3	4	5	6	7	8
12B	Criminal conspiracy to commit an offence punishable with death transportation or rigorous imprisonment for a term of two years or upwards	May arrest without warrant or arrest for the offence which is the object of the conspiracy may be made without warrant but not otherwise	According as a warrant or summons may issue for the offence which is the object of the conspiracy	According as the offence which is the object of the conspiracy is bailable or not	Not compoundable	The same punishment as that provided for the offence which is the object of the conspiracy	Court of Session when the offence which is the object of the conspiracy is triable exclusively by such Court, in the case of all other offences Court, of Session, Presidency Magistrate or Magistrate of the first class
	Any other criminal conspiracy	Shall not arrest without a warrant	Summons	Bailable	Ditto	Imprisonment of either description for six months and fine or both	Presidency Magistrate or Magistrate of the first class

Notes

The fact that proceedings for participation in a dacoity against certain individuals were dropped owing to insufficiency of evidence does not preclude a charge for conspiracy in respect of that dacoity from being brought against the same persons and others for the criminality of a conspiracy is distinct from and independent of criminality of overt acts. *Lathi* play by itself is perfectly harmless and standing alone cannot be treated as evidence of conspiracy to wage war. To attach sinister significance to the mere association in play or pastimes of those that live in the same village or attend the same school would be dangerous specially when those exercises were undertaken with a complete absence of secrecy and rather with a courting of publicity. In the absence of a joint design, a joint association proved to have had revolutionary designs. A letter written by a stranger to a 'combination' one association could not be held to be a branch of another association proved to have had revolutionary designs. A letter written by a stranger to a conspirator which is not shown to have been received or replied to or otherwise acted upon by the later is not sufficient to establish the former's connection with the conspiracy so as to make his acts done in pursuance of the conspiracy. Overt acts may properly be looked at as evidence of the existence of a concerted intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt acts. The prosecution is not obliged to prove a conspiracy by direct evidence of the agreement to do an unlawful

act. If the facts proved are such that the jury, as reasonable men, can say that there was a common design and the prisoners were acting in concert to do what is wrong, that is evidence from which the jury may suppose that a conspiracy was actually formed. Where it appeared that certain members of a society found to be revolutionary were not acquainted with the real object of the society, not having been admitted to its secrets it was held that it would not be proper to convict such members under s 121 A of the Indian Penal Code. The criminality of a conspiracy lying in the concerted intention, once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused, the acts of each conspirator in furtherance of the object are evidence against each of the others, and thus whether such acts were done before or after his entry into the combination in his presence or in his absence. Conspirators are not thereby necessarily subjected to punishment for everything done by their fellows, but acts prior to the entry of a particular person into the combination are evidence to show the nature of the concert to which he becomes a party whilst subsequent acts of the other members would indicate further the character of the common design in which all are presumed to be equally concerned. If arms were collected and secreted in furtherance of a conspiracy before the activities of the associates had been brought to an end by their arrest, the fact that they were discovered after the arrest and after prosecution had been started against them would not make the evidence of the find inadmissible at the trial. The mere circumstances that a book of an objectionable character is present in the library of an individual or an association does not justify the inference that the teachings of the books are approved and adopted by persons who have access to it. The mere fact that books of a distinctly revolutionary character were found in the library of an association and were now and then read by some of its members, would not conclusively show that the object of the society was revolutionary. The presence of seditious literature of this description written by members of the society would however be an important element in furnishing a clue to their tendencies and designs. The utmost that can be said of persons in whose library are found books which are calculated to excite hatred against the English, is that they approved of literature of that nature and even that assumption would not in all cases be a just one. But the presence in the library of a *Samity* of violently revolutionary literature (some of them written in the hands of a member of the *Samity*) urging the destruction of the English and exulting persons who had murdered English people justified the inference that the members of the *Samity* were imbued with the sentiments those documents expressed. When persons engaged in a conspiracy within the meaning of s 121 A of the Penal Code in furtherance of their object conceal the existence of the conspiracy from the authorities a charge under s 23 of the Penal Code may be legally joined with one under s 121 A.

Puln Behari Dass v King Emperor (1911)

Reported in 16 C W N 115

The case was tried by the Sessions Court Delhi who after a long trial passed orders on the 5th October 1914 acquitting five of the accused and convicting the other six under s 302—102B of the Indian Penal Code and sentencing three to death and the remaining three to transportation for life.

Two of the accused were tried on a charge under sections 4, 5 and 6 of the Explosive Substances Act. They were found guilty and sentenced to transportation for 20 years. The case came on appeal before the Chief Court and judgment was delivered by Johnstone, J, on the 10th February 1915 and is reported in Punjab Record for July 1915.

Held per curiam that a charge under section 302—102 B of the Penal Code is not bad and that the terms of section 10 of the Evidence Act are "wider" than the English Law on the subject, and Johnstone, J that where the prosecution has produced *prima facie* proof of a conspiracy to murder and that the appellants were one and all members of that conspiracy, anything said or done by any one of the conspirators whether accused or not, in reference to the said common intention *after that intention was first entertained by any of them* is a relevant fact against each and all of the accused as well for the purpose of proving the existence of the conspiracy as for the purpose of shewing that 'any person' was a party to it. Rattigan, J that in order to decide in the present case whether any act done or statement made or thing written by an alleged conspirator is admissible in evidence against any of the accused persons, the test is to see first whether there is *reasonable ground to believe* that a conspiracy existed between him and such persons and secondly whether such act, statement or writing had reference to their common intention, that illustrations appended to sections of an Act of the legislature are not to be taken as express provisions of law or as binding on Courts. Johnstone, J that having regard to sections 4, 114 illustration (b) and 183 of the Evidence Act the Courts in the matter of the value of an accomplice's evidence, are not tied down in any technical way but it is their duty when deciding (i) whether any corroboration of a particular accomplice is required, (ii) what amount or kind of corroboration is required, to look at the question as a prudent man, desiring to avoid error and to arrive at the truth would look at it. Rattigan, J that if a Court while keeping in view the presumption that an accomplice is unworthy of credit unless he is corroborated in material particulars and after making due allowance for the considerations which render the evidence of an accomplice untrustworthy, nevertheless, comes to the

conclusion that such evidence is true although uncorroborated, and that it establishes the guilt of the accused, it is its duty to convict. *Held per curiam* that the pardon granted to the approver by the Committing Magistrate under section 337 of the Code of Criminal Procedure was valid notwithstanding that the Magistrate, besides inquiring into the offence under section 120-B and 392, with which the accused were ultimately charged, was also inquiring into an offence under section 124-A of the Penal Code which is not exclusively triable by the Court of Sessions or the High Court, that although the evidence in the case might also have supported charges under sections 121-A and 124-A of the Penal Code no sanction under section 195 of the Code of Criminal Procedure was necessary as the learned Magistrate did not try the accused for either of those offences, that as there was nothing illegal in the procedure adopted by the prosecution of proceeding against all the accused upon the charge of the conspiracy to commit murder, instead of charging some of them with the actual murder of deceased and the others with the offence of entering into the conspiracy to commit murder, the Court would not interfere with the discretion of the prosecution, particularly at this stage.

Johastone, J. that there were not two conspiracies in this case but only one with two objects, viz. to commit murder and to cause disaffection by circulation of seditious literature and therefore the conviction of A & C one of the accused appellants, who was said to have conspired only in regard to the dissemination of seditious literature was not illegal. Rattigan, J. that direct evidence of a conspiracy can scarcely be afforded and the Court may infer the existence of the general agreement from such acts and conduct of the various accused persons from time to time as the prosecution may be able to prove that a conspiracy to commit murder may be fairly and justifiably inferred from the facts that certain members of the conspiracy actually did commit murder, that in the house of another member of the conspiracy a bomb was discovered, and that all the accused persons were concerned directly or indirectly with the distribution of literature which was intended to incite persons to commit murder, and that upon proof of such facts every member of the conspiracy would be responsible for an offence committed in pursuance of the conspiracy and it would not be necessary to shew, that a particular member actually concerted the offence with the member who committed it, that having regard to the terms of section 120-B of the Penal Code if A and B conspire to commit murder and B subsequently does commit murder, A is punishable as if he had abetted that murder, *vide* section 109—but if B had already committed a murder before A conspires with him to commit murder, A would be liable to be punished (if in point of fact no other murder is committed) only to the extent provided in section 115. But also that in the latter case the offence committed by B prior to the entry of A into the conspiracy would be a relevant fact as indicating the nature and objects of the conspiracy.

Balmokand and others v. Crown (1915).

Reported in P. R. 1915 17 Cr.

LEGISLATIVE DEPARTMENT, NOTIFICATION, DATED THE 7TH AUGUST 1914.

Ordinance for securing the control of the Press during war.

Whereas an emergency has arisen which makes it necessary to control the publication of naval or military news or information,

Now, therefore, in exercise of the power conferred by section 23 of the Indian Councils Act, 1861, the Governor-General is pleased to make and promulgate the following ordinance—

ORDINANCE No 1 of 1914

1. (1) This Ordinance may be called the Indian Naval and Military News (Emergency) Ordinance, 1914.

Short title and extent

* By Act No 1 of 1915, (The Emergency Legislation Continuance Act, 1915) the provisions of this Ordinance shall have effect as if it had been enacted by the Governor-General in Council and shall be in force during the continuance of the present War and for a period of six months thereafter.

Provided that the Governor-General in Council may by notification in the Gazette of India direct that any provision in the above Ordinance shall cease to be in force at an earlier date which may be specified in such notification.

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas, the District of Angul, the Shan States and the Paigana of Spiti, and it applies also to —

- (a) all Native Indian subjects of His Majesty in any place without and beyond British India,
- (b) all other British subjects within the territories of any Native Prince or Chief in India, and
- (c) all servants of His Majesty, whether British subjects or not, within the territories of any Native Prince or Chief in India

2 It shall not be lawful to publish any information with reference to movements or dispositions of troops, ships, air-craft or war material or to the strategic or other plans or schemes of the naval or military authorities of any part of the British Empire or to any works or measures undertaken for or connected with the defence or fortification of the British Empire or any part thereof or any statement, comment or suggestion calculated directly or indirectly to convey any such information except when such information has been supplied for publication under the authority of the Governor-General in Council or of a Local Government, or has been approved for publication by an officer appointed in this behalf,

- (a) by the Governor-General in Council, or,
- (b) by any officer to whom the Governor-General in Council has delegated the power of such appointment

Explanation—In this section the expression “British Empire” includes all territories under the suzerainty or protection of His Majesty

3 The publisher, editor and printer of any newspaper, magazine, book, pamphlet or other document by means of which any information, statement, comment or suggestion is published in contravention of this ordinance shall severally be punishable in respect of each offence with imprisonment of either description for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both and any other person who sells any newspaper, magazine, book, pamphlet or other document knowing it to contain any such information, statement, comment or suggestion or who is otherwise knowingly responsible for the publication of any such information, statement, comment or suggestion shall be liable to a similar penalty.

4 (1) No court shall proceed to the trial of any offence punishable under this ordinance unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf

(2) No magistrate other than a presidency magistrate, district magistrate, or sub-divisional magistrate shall take cognizance of or try any offence punishable under this ordinance

5 Any police officer may seize any newspaper, magazine, book, pamphlet or other document in which any information, statement, comment or suggestion is published in contravention of this Ordinance, and such officer shall forward anything seized to a presidency magistrate, district magistrate, or sub-divisional magistrate, having jurisdiction in the place where such thing was seized

6. (1) Whenever any newspaper, magazine, book, pamphlet or other document is published in contravention of this Ordinance, a presidency magistrate, district magistrate or sub-divisional magistrate may, whether the offender is convicted or not, order that all copies of such newspaper, magazine, book, pamphlet or other document within the limits of his jurisdiction shall be confiscated

(2) A magistrate making an order under sub-section (1) may issue a warrant to any police officer to seize and detain anything confiscated under that sub-section and to search for such thing in any place where such thing is known or reasonably suspected to be

7 (1) Whenever a presidency magistrate, district magistrate, or sub-divisional magistrate is satisfied from a police report or otherwise that any information, statement, comment or suggestion is being or is likely to be published in contravention of this ordinance within the limits of his jurisdiction he may issue a warrant to a police officer to search for, seize and detain any document containing such information, statement, comment or suggestion

(2) Such magistrate may order that anything seized under a warrant issued under sub-section (1) shall be confiscated

8 A police officer to whom a warrant under section 6 or section 7 is directed may search in any place and seize and detain anything in accordance with the provisions of the warrant and shall forward anything seized to the magistrate by whom the warrant was issued

9 No order made or purporting to be made in accordance with the provisions of this ordinance directing or relating to the issue of a search-warrant or the confiscation of anything shall be called in question in any court, and no civil or criminal proceeding shall be instituted against any magistrate or police officer for anything done in good faith under this Ordinance or purporting to be so done

10 A certificate signed by a Secretary to the Government of India to the fact that any territory is or is not under the suzerainty or protection of His Majesty shall, in any proceeding under this Ordinance, be conclusive evidence of such fact

11 Save as otherwise expressly provided the provisions of the Code of Criminal Procedure, 1898, shall apply to all proceedings under this Ordinance

HARDINGE OF PENSURST,
Viceroy and Governor General

Defence of India (Criminal Law Amendment) Bill, 1915

*Extract from His Excellency the Viceroy's speech in the Council meeting
held at Delhi on the 18th March 1915*

Before the formal introduction of the proposed Bill to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences, I would like to address a few words to Hon'ble Members of my Council

In a speech that I made to you in this Council Chamber on the 12th January, I informed you of the desire of my Government that so far as might be possible the discussion of all controversial questions should be avoided during the course of the war. I pointed out that, in adopting this course, we should be following the example of the British Parliament where all political controversy has been suspended during the war, and where the leaders of the Opposition have refrained from any action which might tend to embarrass the Government. In consequence of the decision my Government have deferred the consideration of a number of important measures of a more or less controversial nature already introduced in Council, as well as the introduction of other Bills. In maintaining this decision, my Government have been loyally assisted by Hon'ble Members, and I should like to take this opportunity of expressing my appreciation and gratitude for your attitude.

In the Bill that is before you to-day, I do not attempt to disguise the fact that it is a measure that presents openings for controversy, and I would have been very pleased to think that we could have done without it, but we have felt that a precautionary measure of this nature has become necessary in order to ensure public peace and tranquillity. You will observe that it is a war measure, to last during the period of the war and for six months afterwards, that on enactment certain important clauses do not apply automatically to the whole of India, but only to those districts or provinces which upon the advice of Local Governments may be notified by the Governor-General in Council. It rests with the people of India to decide how far it may be necessary to put those clauses into force. The fact that such a Bill has become necessary in India as a precautionary measure cannot be regarded as in any way a slur on the people, since it follows in general outline the Defence of the Realm Act passed in both Houses of Parliament and now in force in the United Kingdom, but in so far as trial by court martial is replaced by trial by special Commissioners is of a less drastic nature. Law-abiding England accepted this measure without a murmur, realising that in such a situation *salus populi suprema lex*. You may possibly ask what is the reason for this legislation. To

that I would reply that there is cause for precautionary measures and for quickening up the procedure of justice. You may yourselves have heard rumours of attempts to disturb the public peace, I know that some of you have heard them and although I do not want to go into details, you may take it from me that Government are in possession of information that proves conclusively that a precautionary measure of this kind is absolutely necessary to meet an emergency that may arise. There is no one in this land more jealous than I am of the honour of India and of the striking reputation for loyalty that India so rightly deserves, and I am not disposed to allow the honour and fair fame of India to be tarnished by the criminal acts of a few ill-balanced minds at a moment when India's sons are shedding their blood on the battlefield for the King-Emperor and country.

It is a fact that I might have elected to promulgate an Ordinance embodying the provisions of the Act that is before you, but for political and other reasons and in view of the fact that my Legislative Council is in sessions, I have preferred to take my Council into our confidence, to place the matter before you, and to invite your help and co-operation in enacting a measure so essential to the public weal, and I am confident that you will not refuse.

I will now call upon Sir Reginald Craaddock to move for leave to introduce the Bill.

Extract from His Excellency the Viceroy's speech dated the 12th January 1915, referred to in paragraph 2 of his speech on page 71

I now desire to invite the attention of Members of this Council to a matter of importance which immediately concerns the business of the present session. It is the desire of the Government of India, so far as may be possible, the discussion of all controversial questions should be avoided during the continuance of the war. The present emergency necessitates the enactment of a particular measure to which I will refer later, and for obvious reasons the introduction of this Bill cannot be postponed. In regard, however, to legislation not immediately necessary to meet the requirements of the present situation, I and my Government consider that it would be most inadvisable at this juncture when the minds of all are concentrated on one object, the protection of the Empire against a ruthless and powerful enemy to undertake any legislation which might provoke anything approaching controversy and friction. The one feeling now prominent in the mind of every loyal citizen is the necessity for united action to vanquish the common enemy and no part of Empire has come forward more readily and enthusiastically than India to render assistance to His Majesty's Government. We may have different points of view as to methods of administration and as to details of domestic legislation but in a time of common danger we should present an united front and it is clearly our duty to sink all minor differences to seek and pursue but one object, the successful conduct of the war against the enemies of the British Empire. It is not that I think that the differences to which I have alluded are likely to be of a serious character, but I feel, and I hope you will agree with me, that this is a time when all appearance of division should be avoided, as such differences might be misconstrued by those who are strangers to Indian conditions. In this view we have decided to defer the consideration of a number of measures already introduced in Council, and to postpone the introduction of other Bills. Amongst these I may mention the Criminal Procedure Code Amendment Bill, for the further protection of Minors, the Bill dealing with contempt of Courts, and the Universities Bill. We recognise the fact that, important as these Bills are, they are necessarily to some extent controversial, and in view of the present position, we have decided that it would be better not to proceed further with them during this session.

DEFENCE OF INDIA

(CRIMINAL LAW AMENDMENT) BILL, 1915

The Honble Sir Reginald Craddock :—My Lord, I move for leave to introduce a Bill to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences

As the Council is aware from the printed List of Business for to-day, I shall presently have to ask Your Lordship to suspend the rules of business so as to allow of this Bill being considered and passed at a single sitting of this Council, and it is therefore expedient that I should at once explain to the Council both the circumstances which have determined the Government to bring forward this measure and the nature and scope of the measure itself

In the first place, My Lord it is a great tribute to the loyalty of India and the peaceful behaviour of the vast majority of her people that, while the British Government passed a Defence of the Realm Act at the outbreak of the war, we are now in India half way through the eighth month of the war before we have found it necessary to enact a similar measure in India, for, though under another name, it is really a Defence of the Realm Act to which we are to-day inviting the assent of the Council

The powers that we are now asking for are the powers which in our opinion are required for the purpose of securing the public safety and the defence of British India, and we require these powers only during the continuance of the war and for six months after,—that is to say, until the excitement and disturbance of the general calm, which the state of war engenders, have had time to subside. These powers are primarily required in the military interests of the country, since in ordinary times of peace it is unnecessary to arm the military authorities with such special powers for the protection of property of military value, and for the prevention of injury to such property, or to the interests of the Army generally as are required when the country is at war

So far as the internal situation is concerned, Your Excellency's policy has been throughout to preserve conditions in as normal a state as it was possible to do, and to keep the current of the administration of the country flowing in its ordinary tranquil channels, to take no action of any drastic kind until necessary for such action was plainly manifest. That the Government consider that the present measure has now become necessary need cause no alarm to the country at large, apart from the military interests involved, it indicates nothing more than that there are in some parts of the country sporadic manifestations of disorder which require to be nipped in the bud lest they should grow and spread. Just as we deal vigorously with early cases of a contagious disease lest the disease should become epidemic, so we must deal vigorously with the early manifestations of a turbulent spirit before they have had time to become epidemic

This is the stage at which we are now. Certain disturbers of the general tranquillity in a few parts of the country have taken advantage of the opportunities which the state of war has created to break the peace. It is no news to the Council that there has existed for sometime past on the Pacific Coast of America, and in the Far East, a party of anarchists and revolutionaries who have been engaged in scattering revolutionary seed first among Indians in those countries, and secondly within India itself

by private communications, by despatch of emissaries, and by the dissemination of anarchical and revolutionary literature. This party, which may be conveniently described as the *Ghadai* party, saw in the Great European War their best opportunity for attempting to translate their doctrines into action. Large numbers of deluded men intoxicated with this poison have been returning to India during the last few months, and though the Government of the Punjab have been able under a War Ordinance to put under restraint a number of the leaders of this movement among the returning emigrants and many others of them who appeared to be dangerous, yet the great majority about whom nothing was known were allowed to return to their homes, as the Government had no desire to be strict with possibly harmless people. But some of these together with their sympathizers already in the country, have been committing or attempting to commit acts of violence, and it is therefore of the greatest importance that this mischief should be most promptly suppressed.

Closely akin to this movement is the anarchist movement in Bengal. That we have had with us for a long time sometimes it has been temporarily quiescent, and sometimes it has recrudesced, and at the present time there has, as the Council is aware, been a severe recrudescence, and the crimes committed have become increasingly daring. These two movements in the Punjab and Bengal are more closely connected than might be supposed. They may attract different kinds of followers and they may pursue slightly different methods, but their ultimate aims are the same, and the security of loyal India requires that they should be suppressed.

Thirdly, we come to a class of disorder which has characterized recent disturbances in the Western Punjab. This is of a different kind and has no definite political object when it starts,—it is simply lawlessness, partly induced by economic unrest. Men break out against the restraints of the law to plunder their weaker neighbours, and if this lawlessness is unchecked, it soon assumes the aspect of rebellion against all constituted authority or it may take on the complexion of racial or religious rioting. In some of the Western Punjab districts, indeed it is rapidly becoming a movement among lawless Mohamedans, under the stress or pretext of high prices, to loot and plunder their Hindu neighbours, to wreck the shops and houses of banias and burn their bonds and books. Violent mobs of this kind rapidly swell in numbers any success draws in fresh adherents or produces imitators, and the danger may become a very serious one if it is not effectively dealt with at the very start.

At a time of a war, like the present one which has extended from Europe into Asia, there must always be wild rumours flying about and potential disturbers of the peace may excite the people at large more easily than in ordinary times, calling to their aid economic unrest, or religious fanaticism. It is therefore particularly incumbent on the Government to take all precautions against breakers of the public tranquillity, or mischievous excitement of popular feeling.

These, My Lord, are the causes which have led the Government to introduce this legislation. The disturbances have developed rapidly during the last few weeks, and power to check them, and to stamp out at once this lawless spirit has become a matter of great urgency hence it is that the Council are being asked to pass this measure at a single sitting.

I will now turn, My Lord to the measure itself. The first two sections of the Bill will come into force throughout British India at once, the remaining sections of the Bill only in those provinces or parts of the provinces to which they may be extended by the Governor-General in Council.

The first of these two sections refers only to the short title, duration and extent of the Act. The second section will give power to the Governor-General in Council to make certain rules for the purpose of securing the public safety and the defence of British India, and particularises, without prejudice to the generality of this power, a number of specific purposes for which the power may be exercised.

Section 2 is generally adopted from the English Defence of the Realm Act and the regulations which have been issued thereunder. Thus sub-clauses (a) and (b) very closely follow corresponding provisions of the English Act, as also does sub-clause (c) read with Regulation No. 27, although the prevention of the promotion of feelings of enmity and hatred between different classes is more directly connected with the special circumstances of this country. Sub-clause (d), which enables measures to be taken to secure the safety of means of communication, of the usual municipal services, and of specified areas, deals again with one of the principal objects of the English Act, and the regulations under the latter extend to the taking of possession, the right of entry and the prevention of trespass, injury and approach to specified works. As an example of the wide powers assumed in England as to the taking possession of property and directing the disposal of property, which is covered by clause (e), we find English regulations enabling the removal and destruction of property to be ordered, and factories and workshops to be taken over. Sub-clause (f), which permits of control over the movements and acts of individuals, is paralleled by English regulations which allow of the removal of the inhabitants of whole areas as well as individuals, the direction to them to remain within doors within specified hours and to extinguish lights and the taking of census of private goods. After the enumeration of various specific powers one clause of the English regulations gives a general right to do any other act involving interference with private rights of property which is necessary to secure the public safety or the defence of the Realm. The control of explosives, inflammable substances, arms and all munitions of war, which is the subject of sub-clause (g), is very strictly controlled by the English regulations, and the preservation of discipline among His Majesty's Forces, which is dealt with in sub-clause (h), is naturally both in the English legislation and the Bill an important object of a war measure. Sub-clauses (i), (j) and (k) deal with the powers of search, arrest and prevention, and with the harbouring of offenders, and all have their English counterparts.

The contravention of any of these rules, or of an order issued under the authority of these rules, is made punishable with imprisonment up to seven years and fine, and only if the intention of the person contravening the rule or authorised order was to assist the King's enemies, or to wage war against the King, will the offender be liable to the highest penalties that the ordinary law of the land allows. When the Empire is in a state of war, the rebellious subject and the alien enemy must necessarily fall within the same category.

The Council will observe that offenders contravening these rules will (except where section 3 and the succeeding section of this Bill are put into effect) be triable by the ordinary procedure

I will now turn to the third and following clauses of the Bill, which will only be in force where specially extended by the Governor-General in Council. This prescribes a special tribunal of three Commissioners for the trial of acts which constitute offences under clause 2 of the Bill, as well as for other offences known to the existing law, which are punishable with death, transportation, or imprisonment for seven years, including conspiracy to commit such offences, or attempt or abetment of such offences

In connection with this specially constituted tribunal, I must draw attention of the Council to the points in which we follow and the points on which we diverge from the method of trial provided by the English Act and the Regulations thereunder

In the first place, as Your Excellency has pointed out, in England all serious offences against the Regulations are triable only by courts martial and only minor offences may be relegated to courts of summary jurisdiction

In our new measure, as I have stated, special courts to deal with offences under the rules will only be constituted in special areas. In this, therefore, we are much milder than the Regulations which have been our model. Under our Bill (again only in those special areas) jurisdiction of the Commissioners may be extended in cases of necessity to particular serious offenders, or particular classes of offenders under the ordinary law. This, it is true, has not been found necessary in England, because ordinary crime there has largely diminished, and the ordinary Courts are therefore easily able to deal with it. Nowhere in India, not even in areas specially notified, are we making offences triable by courts martial. We are indeed shortening the criminal procedure by dispensing with committal proceedings and by withdrawing the right of appeal but in its substance the trial before the Commissioners will not differ materially from the trial before Magistrates and Sessions Judges. For a right of appeal, we substitute the safeguard of trial by a Court of three Commissioners, of whom at least two shall be persons who are judicial officers of experience, or are persons qualified under section 2 of Indian High Courts Act for appointment as Judges of a High Court, or are advocates of a Chief Court or pleaders of ten years' standing. It is not intended anywhere to supersede the ordinary criminal courts in respect of the ordinary crime of the country but merely to provide a speedy tribunal for particular cases, or cases of a particular class with which the ordinary courts are unable to cope. The Judges of the Chief Court of the Punjab have themselves authorised the Lieutenant-Governor to say that, in the opinion of the Judges, the ordinary judicial machinery will not be equal to dealing with the heavy cases, which the outbreak of lawlessness in parts of that province has entailed. Furthermore, the greatest check upon the spread of crime of this kind is the prompt punishment of the offenders. It is only the procedure that we are shortening, the law of evidence is not affected, except in the one particular specified in clause 9, which finds a parallel in the Act of 1908. The Council will readily recognise

that the ordinary machinery of law and order in this country is based upon the average volume of crime, when crime increases considerably, that machinery is strained, if the increase is still larger, the machinery may break down. Justice is proverbially slow, and the system which has grown up in this country by its nature interposes so large an interval between crime and its punishment that the ordinary procedure is quite unequal to the suppression of violent crime whenever crime threatens to become of an epidemic character.

Although, therefore, the special procedure which is created by the Bill may extend to more offences than is the case in England, yet that procedure is in itself much less drastic than that adopted in England. It will extend only to limited areas, and to limited cases in notified areas. Except for these limited cases in limited areas, the ordinary courts will continue to deal over the whole of India with ordinary crime, including even such stray offences against the rules which may happen to be committed in other parts of the country. It will be obvious that no Local Government will wish to refer more cases to special Commissioners than is clearly necessary. If they were to swamp the special courts with cases, they would be frustrating the very objects of these special sections.

I submit, My Lord, that this procedure in no way goes beyond the necessities of the case, and that no loyal and peaceful citizen need feel any alarm at the introduction of this legislation. If there is any alarm at all felt in this country, it is the alarm caused by the manifestations which I have already described, and the taking of any measure that may be calculated to secure the suppression of those manifestations is likely to diminish that alarm.

I move for leave to introduce this Bill in the confident hope that it will receive the full support of this Council.

The Hon'ble Lieutenant Colonel Raja Jai Chand.—My Lord, I fully realise the necessity of this Bill and have not a single word to say against it. I accordingly support it with all my heart.

The Hon'ble Sir Gangadhar Chitnavis * * * *

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Coming to the Bill now before us, drastic though the proposed legislation is, I must support it. Exceptional circumstances justify extraordinary measures. In times of the utmost gravity to the whole Empire like the present considerations of individual rights have to be subordinated to the higher considerations of the good of the State. The greatest good of the largest number is the active utilitarian idea which underlies all legislation and all rules of ordered society. The Bill should be judged by this principle. The whole question is one of utility, of expediency, and Government must be in the best position to decide it. And when they deliberately come to the conclusion that the assumption of extraordinary powers is necessary, we may accept it as correct, we hold Government responsible for the peace of the country and for our safety, not only from foreign aggression, but from internal disorder. If for the due discharge of that responsibility larger powers be necessary, they cannot in fairness be withheld. It is possible of course, to hold different views about the expediency of the particular measures suggested, but in view of exceptional situation, it is,

in my humble opinion, to our interest not to stand out for the methods that appear most agreeable to our personal ideas I would accordingly support this legislation, although it means a serious, if not a dangerous, addition to the restrictive laws we have enacted during the past few years, subject to the modification as regards details suggested below It must however, be remembered that this is mainly a war measure based upon the peculiar circumstances of this country, and that in these times in the United Kingdom also special legislation of this kind has been found necessary These all are points in favour of the Bill

But My Lord, it causes one a pang to think that such legislation has at all become necessary When in September last I moved in this Council the resolution expressing our unswerving loyalty to the Throne and our determination to participate in the cost of the war, little did I dream that the situation in any part of India would ever be so bad as to cause anxiety to Government My Lord only the other day we reiterated our protestations of loyalty in this very Council, and our sentiments were as genuine as earnest then as in September last The whole country was with us on the second occasion as on the first And yet before three weeks are out, disquieting reports have been received about the situation in certain parts of the country I would fain distrust them, I would fain believe they are greatly exaggerated But, My Lord, we are passing through critical times, and sentiment has to be put aside If Government do err, it is much rather they should err now on the side of over caution Despite of my support to the Bill, I would, however, request Your Excellency to note that I do not for a moment concede that the great heart of the nation is anything but sound,

My Lord, though I support the principle, yet I think that some amendments in some particulars are essentially necessary, and may be wisely made without detriment to its main object I would recommend that in summary trials capital punishment should, as far as possible, be avoided whenever the object of Government can be served by imprisonment or transportation. It would have also been much better if the Government could have seen their way to eliminate from the Bill trial of certain minor offences regarding life and property now included in the Bill

Another recommendation that I wanted to make was that the law should not have retrospective effect

I would have pressed these amendments, but with the assurances given by Your Excellency this morning, it will ill-become me to press them. We were all glad to hear from Your Excellency this morning that there is no one more zealous to maintain the honour of India than yourself Your Excellency's past career has shown that you have been India's best friend, and I am sure that India's interests are safe in your hands

My Lord, the details of the Bill, apart from its principle, as I have already made it clear, has my support We cannot forget that even after that dastardly attempt upon your life when Your Excellency suffered terrible agony, Your Excellency commanded that you would not like people to be harassed on suspicions only This must bring home to the people that if this legislation is found necessary by Your Lordship, it is because the situation is quite exceptional, and should be treated in an exceptional way We doubt not that this new law, as said by Your Excellency this morning, will be put into operation with as much care

and thoughtfulness as the other repressive laws have been in Your Excellency's time. I hope my countrymen will also so conduct themselves as to enable the authorities to allow the law to remain a dead letter and to enable Government to withdraw the measure from the Statute-Book as early as possible. My Lord, I regret the urgency of the measure prevents its being sent to select Committee.

With these few words, I beg to support the Bill.

The Hon'ble Sir Fazalbhoy Currimbhoy :—My Lord, I rise to support the Bill now before the Council. I do so, not that I particularly approve of drastic enactments and retrograde laws, much less that I like to see my countrymen deprived of the right of trial by the ordinary courts, or of their heritage—a trial by jury. My Lord, the Bill has my support for the sole reason that I feel honestly convinced that at a moment of grave national crisis like the present one, political rights of the individual must give way. The one desire of every Indian is to help the Government to the fullest extent to prosecute this war to a victorious termination, and any support that this Bill may receive here to-day is I am sure, the result of that sincere desire.

I will not go so far as the noble Marquess of Lansdowne in his speech in the recent debate in the House of Lords on Lord Parmoor's Bill to amend the Defence of the Realm Consolidation Act, in maintaining that I would be 'prepared rather to risk even an occasional miscarriage of justice', but I am entirely at one with his Lordship in thinking that emergency measures like the Bill now under discussion 'must involve some interference with the privileges to which the country attached the greatest importance and which it venerated and cherished very dearly, and that in times like these we must be prepared to part, if necessary, with some of these privileges for the public interest required it.'

It might be argued that we are far from the seat of War. As a matter of fact we are. But it must not for a single moment be forgotten that the fortunes of Great Britain in this war are our fortunes, and this is a time, above all others, when it must be right that the troubles and anxieties of Government should be looked upon by my countrymen as their very own.

My Lord, I have listened with deep interest to the lucid pronouncement just made by Your Excellency and I hope I am indulging in no idle hyperbole in assuring Your Excellency that your cares and your worries are shared by all right-thinking Indians and have our unstinted sympathy. The gallant deeds of our Indian soldiers in the field and the willing sacrifice of their lives amply prove this.

My Lord, I admit that sub-clause (1) (c) of clause 2 and clause 3 have occasioned in my mind no small measure of anxiety. They appear to my lay mind of far too sweeping a nature, but I feel confident that even at the moment of greatest emergency and excitement the Executive and, more especially, the Judiciary may be fully trusted to preserve a balanced and dispassionate mind and not to mix up purely civil offences, and that great care and the utmost hesitation will be exercised in putting these clauses into force where there is the remotest trace of the offence being

of an essentially civil nature. Clause 3 appears to cover many common crimes which come at present within the purview of the Code of Criminal Procedure and the Indian Penal Code, but I have full faith that under Your Excellency's argus eye none of these will be permitted to come under the scope of the Bill. Capital punishment also, especially in case of a difference of opinion among the Commissioners, appears unnecessary. The purpose of the Executive can be served by transportation of the accused. I do not think everything has been said or can be said of the reasons which have impelled Government to introduce this Bill, but I hope that, if without impairing the efficiency of the measure in the least, Government can in any way modify the clauses likely to operate harshly on the people they will do so as of all things I should like to see the Government assured of the co-operation of the people in an unprecedented enactment of this nature. I give my support all the more willingly as we are assured that the Bill is to have currency during the continuance of the war and only for six months after.

"One word more and I am done. One dreadful thought has obsessed my mind all throughout yesterday and to-day. My Lord, I earnestly trust that this Act, in after days, will not be used against us as an argument by interested parties when the time for granting the promised concessions to India arrives. I view with dismay the opposition already presented in the House of Lords to the proposed concession of granting an Executive Council to the United Provinces. My Lord, your opening remarks have greatly relieved my anxiety, as Your Excellency assured us that this Act will in no way mar the good name of India, and we implicitly trust to Your Excellency's statesmanship to save us from that. With these few words I support the Bill."

The Hon'ble Mr. Dadabhai :—My Lord, I feel I should not give my silent vote in favour of this most unwelcome Bill, and yet I find it difficult to express my feelings adequately on this occasion. I am weighed down with an overpowering sense of duty, duty to my constituents and duty to Government. By my oath of fealty and allegiance I am bound to exercise all my influence and all my power for the promotion of considered schemes of legislation designed to strengthen the position of Government. At the same time I owe it to my constituents, I owe it to my beloved country that I should be watchful of the interests of the people as well and not be a party to any measure which has the effect of interfering unnecessarily and to an inconvenient degree with their constitutional rights, rights secured to them by Royal Proclamation and despatches, and a long series of benevolent legislation. Ordinarily, there need be no conflict between the two interests, but occasions do arise at times when the faithful discharge of both the duties is a matter of exceptional difficulty. My Lord the present is one of those occasions, and the action of a non-official Member is liable to be misconstrued.

The Bill marks another stage, and a stage of grave moment, in repressive legislation. We have already a number of special Acts of this Council, more or less comprehensive in scope, which one would think sufficient for all executive purposes. Two of them, at any rate, the Indian Crimes Act of 1908 and the Indian Conspiracy Act of 1913, are of a drastic nature, and we have yet to learn that they have failed in their purpose. Another law on the top of them all, still, still more drastic and still more

restrictive, certainly justifies a searching examination of the whole position, and the non-official Members of this Council would in ordinary circumstances have reason to hesitate to associate themselves with it. But the present is an exceptional situation. With war raging in Europe with the British Empire as a belligerent party much against her wish, and in view of the unscrupulous methods of the enemy, Government has got to be trusted about the expediency of exceptional legislation of a temporary character. My Lord, I do not feel myself competent to judge of the exigencies of the situation. Government has serious information which is necessarily withheld from the public, and if upon such information Government claims additional powers, I would not take upon myself the heavy responsibility of withholding my support. From the necessities of the position, the whole responsibility of the fresh legislation practically lies with Government and the non-official Members share in it upon trust. We must confide in Government in the times of stress and emergency, we only act upon trust, in implicit faith and the purity of the motives and the judgment of Government, with the sole intention of maintaining Government in sufficient strength to deal adequately with the situation. It is stated that a new situation has been created in certain areas which cannot be promptly and effectively dealt with under the existing law. We do not know much about it ourselves even after the somewhat exhaustive statement made by Your Excellency and the Hon'ble Home Member, and we are not competent to form any decisive opinion one way or the other. We have not got here a Government like the one they have in England, and no legislative measure, however emergent, is passed by Parliament in such great hurry. But as it is, we are ignorant of the true state of the facts, and this is not the time for speculation. I feel myself thus bound to accord my support to the general scheme of legislation proposed, in the belief, founded upon the official statement that it is absolutely necessary in these exceptional times in the interests of law and order and for the good of the country.

My Lord, my action on this occasion has another, and a more powerful, spring. We have had during Your Excellency's regime two legislative Acts of a repressive character, and the care with which they have so far been worked induces the hope that the proposed law will be enforced only when such enforcement becomes unavoidable. Your Excellency's presence at the head of affairs affords an ample guarantee that the large powers now assumed by the Executive will not be misapplied. My Lord, it is this conviction, it is this belief, that has influenced my vote to day more than anything else.

But all said, My Lord, the legislation cannot be agreeable to any Indian. I am glad as Your Excellency said to-day it will not be regarded as a slur on the people. It is a matter of melancholy reflection that, after our loyalty has evoked the admiration of the world, any of our countrymen should have been guilty of any conduct which has created in the country a serious situation, so much so that the responsible Government feel themselves powerless to cope with it satisfactorily except by an abnormal extension of powers and by the supersession, by a court of extraordinary jurisdiction, of the ordinary courts of law. But my Lord, it is only human to err, and it is sincerely to be hoped that the errors of the few will not be visited upon the whole nation. In the hour of victory one can afford to be generous, and I fervently pray that when success has finally attended British arms and the war is over, this legislation will not be used to frustrate our legitimate hopes and aspirations.

My Lord, I do not for obvious reasons subject the provisions of the Bill to a critical examination, but before I resume my seat I beg to point out some of the features of the Bill which appear to me unnecessarily severe. We must never forget that the court that will be constituted under the new law will be final, and have extremely summary powers. It is only fair therefore that its jurisdiction should be limited to only such offences as are likely to jeopardise the State. But a careful

perusal of the Bill will show that almost all offences of a more or less serious nature, even though not having the least bearing upon the war or upon the conditions introduced by the war, will be triable by the Commissioners, in supersession of the jurisdiction of the ordinary courts. Offences like theft even, if aggravated by previous convictions, rape, dacoity, forgery, and defamation come within the purview of the proposed legislation. It may be that it is not intended that the law should be put into operation in such cases, but when there is the chance of its operation being so extended to offences which can be adequately dealt with by the ordinary courts, all principles of legislation justify the observance of greater strictness in drafting. Every enactment should express clearly and unambiguously the intention of the legislature, and every word in any provision must be taken to have been used deliberately. Clause 3, sub clause (1) requires therefore considerable modification, with a view to prevent the Commissioners from assuming a jurisdiction which it is intended they should not have. Any assurance from Government that the operation of the law would be limited to particular offences or classes of offences will not cure the defect I have just pointed out. Surely, the ordinary courts cannot be supplanted by this extraordinary court.

My Lord, I have a few small suggestions to make. In clause 2, sub clause (1) (b), the intention of Government seems to be to prevent effectively all attempts at interference with recruiting for the Army and the Police, but the language is capable of a wider interpretation. There is nothing to prevent a man being tried by the Commissioners for advising any relation of his not to accept service under Government as clerk. This is obviously not the intention of the legislature. The dissuasion referred to in the clause must expressly relate to military service.

I do not also think that powers of this extraordinary nature should be exercised by Sessions Judges of one year's standing. We must have more experienced men to do this sort of Judicial work. It is an accepted principle of Judicial administration that summary powers be exercisable by officers of experience only. When the scope of the summary jurisdiction is extended reasons of prudence will counsel even a greater strictness in the matter of the qualification of the judicial officer. I accordingly suggest that Sessions Judges, of at least three years' standing only, should be eligible for appointment as Commissioners.

Clause 5, sub clause (2) provides for the contingency of disagreement in opinion among the Judges, but I submit that it should further be provided that, in the event of such disagreement taking place in the trial of any offence punishable with death, capital punishment must not be inflicted. In such cases at least the benefit of the doubt can be so far given to the accused as to prevent execution. The difference in opinion denotes the existence of a reasonable doubt about the guilt of the accused, and it is the barest justice to him that he should not undergo the extreme penalty of the law. Under the law as it stands at present, capital sentence passed by the most experienced Sessions Judge has to be confirmed by a High Court bench of two Judges, but the decision of the Commissioners is to be final in the Bill. It is therefore all the greater reason that some such safeguard as mentioned above should be put in. My Lord I also pray that this Act should not have retrospective effect. At a later stage I shall propose some small necessary amendments. My Lord, I offer you our grateful thanks for placing this Bill in our hands a day before its introduction in this Council.

The Hon'ble Mr Abbott —I give this Bill my full and whole-hearted support, as I am satisfied that Your Excellency's advisors have just and sufficient reasons for bringing it before this Council. The time has now come for us, the non official Members, to act up to the loyal resolution we all so heartily supported in September last.

The Hon'ble Maharaja Manindra Chandra Nandi —My Lord, in view of the fact that this measure is intended to to aim the Executive with certain special temporary emergency powers requisite to secure the public safety and the defence of British India, and that it will be in operation during the war and for a period of six months thereafter, I beg to support the Bill before the Council. I recognise that the Government have brought forward this measure to meet a grave emergency, and as such, it is entitled to our loyal support. My Lord, I have no doubt that the greatest care and caution will be taken in the actual application of this measure, and that it will subserve the special purposes for which it is being enacted.

The Hon'ble Mr Ghuznavi —My Lord, I have not the least hesitation in supporting the principle of the Bill which has just been introduced in this Council by the Hon'ble the Home Member. At the outset I desire to express my thanks to Government for having postponed the introduction of this Bill till to-day and for having given us an opportunity to acquaint ourselves with the contents of the Bill before we came into this Chamber this morning. If I am not mistaken the practice that prevails in England in the House of Commons at an emergency like this is to introduce a Bill in the House without previous circulation to the Members.

The advantage of the procedure, adopted in this instance I trust, will be fully borne out, for on reading section 1, clause 4, where it is stated that "this Act shall be in force during the continuance of the present war and for a period of 6 months thereafter," ought to have the effect of inducing even those of our colleagues who are always ready to criticise any and every Government measure to give their unstinted support to a measure of this kind which at the very outset is purported to be only a temporary one. My Lord, we are in the throes of at most hideous and a terrible war. Ever since the dawn of civilisation, nay, even in pre civilised times throughout the history of mankind there has never been a war such as this, which has demanded and is demanding an appalling toll of human life, and which has already had the effect of decimating in hundreds, thousands and tens of thousands the flower of civilised manhood in the heart of the boasted civilisation of the West. In this world-struggle our glorious Empire has been plunged and in this *guerre a la mort* England has had to unsheath her sword in defence of honour and in the interest of a loftier civilisation against the barbarous hordes of the Germans of the times of Julius Cæsar. From all corners of our Empire our fellow citizens have marched forth in defence of England's prestige and England's cause. Nearly eight months have rolled by, yet the struggle goes on in terrible intensity and unparalleled ferocity, and no one is yet able to foreshadow the end. No one can therefore deny that the exigencies of the times are such that must call forth extraordinary measures. In England, the Defence of the Realm Act has already been passed, and it is only proper that here a similar measure should be taken and that without delay, and the Executive should be given more power to deal promptly and effectively with circumstances that may arise in the defence of India and the Empire at large.

Therefore my Lord, I trust there will not be found a single member in this house who will hesitate a single moment in giving his whole-hearted support to a measure of this kind which has for its justification the needs of the hour in the defence of our realm.

My Lord, this Act seems to have, however, a twofold object, the first object being as I have already endeavoured to delineate, namely immediate measures that may be necessary owing the exigencies of the war, and the second object being the stamping out of lawlessness, sedition and anarchy which have unfortunately found their way—may I say from the West—into this otherwise peaceful and peace-loving land of the East to tarnish the fair name of Hind. It should be a matter of extreme regret to all of us that this lawlessness instead of receiving a check from the repressive measures that have already had to be passed

is still growing apace and is still breaking out into various fantastic and undreamt of ways. Well I remember how we all regretted two years ago that during the very first session of this Council in the new Capital of India, this historic city of Delhi which as yet I hope destined to eclipse her former glories, it should have been found necessary to introduce another measure, I mean the Criminal Law Amendment Bill of 1913. During the passage of that Bill, while it met with unanimous support from the majority of all of us, it at the same time met with considerable opposition from one or two members, of whom at least one I am sorry to find is not present to day. The opposers, of that Bill at the time painted in glowing colours what the terrible effects of it would be, and to what an amount of abuse it would be put in the hands of the Executive, especially of the police who have always enjoyed the distinction of being the butt of a considerable amount of adverse criticism. When the police go out of the way and commit an abuse of their powers, I have ever been and always am ready to draw the attention of Government to their misdemeanours. At the same time, I would advise my friends who are habitually opposed to them to remember that they are officers of Government who have to carry their lives in their hands, and whose duties are about the most arduous that can be imagined. Robberies, dacoities, murders are constantly in the air, and it is a matter of great misfortune that a section of our people, however infinitesimally small, has become utterly unreconcilable and wedded to the idea that terrorism is the surest way to the progress of the country. I must therefore emphatically assert that amid terrorism liberty only dwindles, and liberalism is doomed to decline, and it behoves every man of education, every true lover of his country, to take a share in the fight against an evil which is small enough at present, but which if it were allowed to grow without being checked, its consequences will lead to most undesirable developments in the future. The recurrence of these deplorable crimes is certainly the greatest evil that confronts the party of Indian reform of to-day. The continuance of anarchical crimes is not less prejudicial to the people than to the Government. It is indeed doubly cursed for it hardens the Government and brutalises the people, and it leads to the gradual decline of liberalism, and it is injurious both to Government and the people. It affects the people perhaps far more adversely and prejudicially than the Government, and therefore it is the duty of our public men and of our public press to speak out and to stem as far as it lies in their power the course of this grave evil. Every one who has the real good of his country at heart must admit that the weapons which have been forged in the legislative armoury have not proved to be sufficiently effective in dealing with this evil. Criminals are apprehended, they are put on their trial, the trial is prolonged from months to years, and in the end the tax-payer's money is wasted, perhaps to no advantage at all. This is an aspect of the question which certainly deserves our careful attention and which certainly calls for some new kind of legislation which might stop this abuse. The country has just lost one of her greatest statesmen, I mean Gopal Krishna Gokhale. The policy which he always endeavoured throughout his career to follow is the policy which ought to commend itself to all our public men, and that policy was association *cum* opposition so far as Government was concerned. If the interests of his country and the interests of good government demanded that he should associate himself with Government in any measures, that association was always generous, frank and whole-hearted, but when the interests of his country and countrymen demanded that he should oppose the Government that he should draw the attention of Government to an error into which the Government had fallen, then he never faltered for one moment in doing his duty to his country and in raising his voice in no uncertain manner so as to explain to Government where the error was, that, My Lord, in my humble opinion, is the policy which should commend itself to all lovers of our country. Criticism should always be constructive, for nothing is gained by destructive criticisms except waste of our time and that of Government.

In times of war criminals are tried by court martial. In this instance a special tribunal is proposed to be founded consisting of three Commissioners, of whom one is to be a non-official and must be an advocate or a pleader of ten years' standing. This is a safeguard which I heartily welcome. I would only say that with regard to this I wish to suggest that in clause 4 (3) the words 'at least' should be omitted so that in every special tribunal contemplated by this Act, there shall always be present a non-official well versed in law. There are other alterations which I should like to suggest. I would draw the attention of the Hon'ble the Home Member to clause 3 (1) where it says that 'any person accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, may be tried by this tribunal.' My friend, the Hon'ble Mr. Dadabhoi has already pointed out that if this is left as it is, it would mean that offences relating to counterfeiting of coins, voluntarily causing grievous hurt, kidnapping, abduction and mischief and many others of a similar kind will all come under the purview of this new tribunal. I would therefore suggest that offences triable by this special tribunal should be clearly defined.

I should also like to support my Hon'ble friend, Mr. Dadabhoi, in his suggestion, namely that in clause 4 (3), where it is stated that 'All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of one year,' in place of 'one year' at least 'three years' must be substituted.

In conclusion, My Lord, I should like to express the hope that better sense might yet prevail amongst the misguided ones in our country, and though this Bill may be enacted into law, that it may yet remain a dead letter. With these few words I gave my whole-hearted support to the introduction of this Bill.

The Hon'ble Rai Bahadur Sita Nath Ray —My Lord, considering the gravity of the situation and the emergency which has arisen and the dacoities and murders which are being openly committed from day to day, in several parts of Bengal, and even in the streets of Calcutta, I feel no hesitation in giving my humble support to the Bill. I am sure that, under this Act, nothing will be done, no steps not absolutely necessary will be taken which may go to create alarm and stir up public feelings. Considering Your Excellency's broad sympathies, and how jealous Your Excellency has always been not to take any action which may go to cast a slur upon the admitted loyalty of my countrymen and upon the fair name and reputation of India, I am sure that the Act will not be put into operation everywhere and anywhere and unless it becomes absolutely necessary. With these few words, I beg to give my humble support to the Bill.

The Hon'ble Raja Kushalpal Singh —My Lord, on behalf of the large landholders of the province of Agra, whom I have the honour to represent on this Council, I beg to give my cordial support to this Bill in all its essential features. This speech of the Hon'ble the Home Member leaves no doubt in my mind that effective action of the kind proposed by the Bill is imperatively needed at the present juncture. In the present grave situation which has arisen in some parts of the country it is our bounden duty to lend every assistance in our power towards the suppression of anarchy, violence and sedition. For exceptional circumstances, exceptional remedies are required and are permissible. In view of the serious actually existing evil, the extraordinary powers asked for by the Executive cannot be withheld.

Nobody can deny that exceptional times like the present necessitate the adoption of a more summary procedure and sharper methods than what are suitable for ordinary times. We have the precedent of the English Defence of Realm Act.

I sincerely hope and trust these measures will effectually extirpate sedition and the anarchist propaganda, and that ere long the atrocious acts of lawlessness described by the Hon'ble the Home Member will become the things of the past and and be nothing more than matter for history

The Hon'ble Mr Das.—My Lord, we passed the other day a unanimous resolution, which was intended to be communicated to His Gracious Majesty, in which we gave expression to the determination of the immense population of this country to secure success in the war at any sacrifice and Your Excellency was pleased to communicate to this Council to day the fact that this resolution was communicated to His Majesty and read by him with pleasure. We have also just received the news from Your Excellency that the Indian troops are behaving in a manner at the front which has won for them the admiration and praise of European officers. It is really very painful, My Lord, that, at a time like this, this Council should have been under the necessity of passing a Bill which is of an emergent character and which has been demanded on account of the gravity of the situation, the nature of which is known to Government.

Those people who at a time like this do anything which casts a slur on the loyalty, the past history and the traditions of the Indians are to be considered as the worst of miscreants and in my opinion no drastic measure ought to be considered as too severe for them. There is also, no doubt, from what has transpired these last few years, that there is a class of men who are gathering numbers round them, growing in numerical strength and perhaps in influence too. A measure of this nature as is before, the Council, a measure of this character ought not to be considered from our point of view only, but it has also to be looked at from the point of view of that class of men whom I can best call our enemies. From the fact that this class is growing by converts from peaceful citizens and they are using their influence to increase their number, anything in a measure of a legislative character which is ambiguous or which is of such a nature as would give them an opportunity to make people believe that this Government is of an arbitrary character would be an instrument in their hands, which they would use to their advantage. I have looked at the Bill from that point of view, and while I consider it my duty to give my whole-hearted support to the Bill, I should like the Hon'ble Member in charge of the Bill to look at it or certain portions of the Bill from this point of view and see whether it is not likely to be an instrument in the hands of our enemies and used by them as evidence of the arbitrary power of the Government. One section provides that this special Tribunal will try offences which are tried in the ordinary courts and are punishable under the Penal Code. I find that there is a provision for cases in which punishment is ten years rigorous imprisonment and there may be cases of criminal breach of property or ordinary cases of arson, and yet at the same time I find that this clause does not include cases of rioting which are more likely to have a political aspect, consequently, the section ambiguously or carelessly worded as it stands would be considered by our enemies as an instance of Government's object to have an arbitrary power in regard to ordinary offences which are ordinarily triable in the ordinary courts. Another instance to which the attention of Your Lordship has already been drawn is that the judge should be one of longer experience than one year, and also that capital punishment should not be awarded in cases when there is any doubt. But in the circumstances, as I consider that no punishment could be too severe for these men and we have full faith and confidence that under Your Excellency's Government this Act will never be used in such a way as really to bring under its purview men who are really friends and loyal subjects of the Empire, I do not consider it necessary to repeat amendments which have been made. I do really hope that that the Hon'ble Member in charge of the Bill will take into consideration this fact as to whether section 3 might not be amended so as to give no occasion to our enemies to consider it as evidence of the arbitrary power of the Government.

and at the same time it should include those cases of rioting which are liable to have a political aspect attached to them,

With these words, My Lord, I give my whole-hearted support to the Bill.

The Hon'ble Mr Banerjee—My Lord, I have listened with attention, I may add with respectful attention, to the speech of the Hon'ble Member in charge of this Bill and to the speeches that subsequently followed, including the lectures which my Hon'ble friend to the left* read to our public men who are members of this Council. I will say this that I am not convinced as regards several of the provisions in the Bill, and to my mind do not seem to be justified by the exigencies of the country or by naval and military considerations. My Lord, we have been told and I accept the statement in an unqualified form, we have been told the situation in the Punjab is grave and the situation in Bengal also is serious, though perhaps not to the same extent. The object of the Bill is to improve the situation. The end is one which will commend itself to all, no matter to what school of politics he may belong, for we know that order—stable order—is the fundamental condition of all real progress. But when we come to consider the means to be devised for the purpose of attaining this object differences of opinion arise. My Lord, I say at once that so far as the provisions of the Bill are concerned arising out of the war and relating to naval and military conditions it is the duty of every patriotic Indian to accord to them his whole-hearted support, and I am sure that this will be the sense of the country.

But My Lord, the Bill traverses ground beyond military and naval considerations, raises issues of a highly controversial character in regard to which many of us will not be able to see eye to eye with the Government. It has been stated by the Hon'ble Member in charge of the Bill that it is framed upon the English Act. Well, in many respects it traverses beyond the English Act, and I will mention one or two points. I am not considering the sections in detail, but section 2 creates an offence which is not to be found anywhere in the English Act, namely, promoting feelings of enmity and hatred between different classes of His Majesty's subjects. That is altogether new in this Bill, it is nowhere to be found in the English Act, and I think the Hon'ble Member in charge recognises the fact.

Then My Lord, there is section 3 which creates a particular tribunal and lays down specifically the offences which are to be tried by that tribunal.

My Hon'ble friend in charge of the Bill has said that the tribunal in England is the court martial; here the tribunal is to be a Commission to be constituted by the Local Government. Undoubtedly the provisions of the English Act as regards this matter are far more drastic than the provisions of the Bill that is before us. But, My Lord, an amendment was moved in the House of Lords the other day—and I believe the underlying principle of it was accepted by the Lord Chancellor and the Government,—under the terms of which, when members of the civil population would be affected, they would have the right of claiming trial by a civil court and by a jury. But what I desire to point out is this, that it is only specific offences that are covered by the English Act, whereas we have a large number of offences under the head of Public Safety included in the Indian Penal Code which find a place here and which are to be tried in a summary fashion by a specially constituted tribunal.

Therefore, My Lord, the contention that this Bill is framed upon the basis and the model of the English Act is only correct in a qualified sense. It is far more comprehensive than the English Act, and because it is so, I fear there will be a great deal of agitation and controversy in the country regarding its provisions.

My Lord, reference has been made to the growth of anarchism in Bengal, to the recrudescence of crimes of violence in our province. My Lord, we, the educated community of Bengal and the leaders of the moderate party, hold anarchism in absolute horror and detestation, and we are doing what we can to put it down so far as it lies in our power. On the 13th of this month we held a Conference in the rooms of the British Indian Association, presided over by the Maharaja of Burdwan and attended by many men of light and leading, including a European gentleman who is the Principal of an important college in Calcutta. My Lord, it was the unanimous sense of that Conference that restrictive measures would not be suitable, and that they would aggravate the situation. My Lord, that is the deliberate judgment of the people of Bengal. We feel that the effect of restrictive measures in Bengal would be to add to the uneasiness of the community and perhaps help the breakers of the law, who would welcome them. What is needed is not new legislation, but greater efficiency in the police. I freely admit that the efficiency of the police has been added to and improved in recent years, but a great deal more remains to be done. My Lord, it is the immunity of the offenders and the helplessness of the law community who are defenceless and unarmed, that encourage these breakers of the law in the perpetration of their foul deeds. I may remind the Members of this Council that there was a formidable conspiracy soon after the outbreak of Fenianism in London, the object of which was to blow up the public buildings with dynamite. In one year's time the London police shadowed every conspirator, hunted down the gang and the country was purged of the scourge. Of course I know India is not England, but still, what we feel is that if the Government is to deal with the outward symptoms of these unhappy developments, the efficiency of the police has to be greatly improved. With regard to the root causes, My Lord, they have to be dealt with in that spirit of conciliatory statesmanship for which Your Excellency's Government has obtained a name and fame.

My Lord, I feel that in this matter the Government should have proceeded by Ordinance. Your Excellency was pleased to refer to this matter in the course of your speech. We of course bow to Your Excellency's decision, but what some of us felt, what I at least felt, was this, that in this matter the Government could not admit us into their fullest confidence, that they could not perhaps disclose to us, in all their details, the information upon which their judgment was based, and that therefore it was impossible for us to record an intelligent vote. That being so, I felt that it was the clear duty of the Government to have assumed the entire responsibility of these measures by issuing an Ordinance. However that may be, My Lord, we are grateful to Your Excellency for the assurance which Your Excellency has given us to-day, that the crimes of a few fanatics, and this law which Your Excellency's Government thinks necessary to enact for their prevention, will not be regarded as a slur upon our loyalty. I hope and trust that this measure will in practical operation be administered with moderation and self-restraint. I hope and trust that it will not be a weapon in the hands of the enemies of Indian advancement for the purpose of blasting those prospects and frustrating those hopes which have been roused in our hearts by the loyal devotion of our countrymen consecrated by their blood on the battlefields of Europe. For the faults of a few fanatics the millions of our countrymen who are loyal to the core of their hearts should not suffer.

The Hon'ble Sir Ibrahim Rahimtoola—My Lord, I think Your Excellency will have, with your great gifts, realised the prevailing sentiment amongst the non-official members of this Council in regard to this Bill. That sentiment, Your Excellency, is unanimous in offering to co-operate and assist in the passing of any legislation which Government may regard to be necessary, under present conditions, and I am sure you will appreciate from the views to which non-official members have given expression, how whole-hearted they are

in their support of a measure to deal with the prevailing condition of the war. However, we may disguise it, it is painful to reflect that any occasion for legislation of this character should have arisen and that Government should have considered it necessary to bring it forward for the approval of this Council. There is one thing, however, which has clearly come out of the debate that has taken place, and that is that while whole-heartedly in favour of any legislative measure which may be considered necessary by Government to meet existing circumstances in different provinces, the non-official members feel that the provisions of the Bill need some alteration and amendment.

It is stated in the Statement of Objects and Reasons that this Bill deals with two distinct classes of cases. The first is in regard to all military and naval matters, or, more distinctly speaking, all matters in connection with the war. Not only the non-official members of this Council, but, I venture to think, the whole of the people of this country are willing to arm Government with all executive powers by legislation which may be considered necessary to meet the naval and military circumstances of the case. The Bill, however, essays to go a little further than that and it deals with certain things other than can be directly brought under the designation of 'war measures'. Even in regard to that part of the Bill there is a consensus of opinion to support Government, to enable them to deal with what the Hon'ble the Home Member referred to, namely, the special circumstances prevailing in the Punjab and in Bengal, but restricted to the lawlessness in the one case and dacoities in the other. If this measure was restricted to all matters in connection with the war and also in regard to the lawlessness in the Punjab and the dacoities in Bengal, I think the whole Council would be practically unanimous in supporting Government and when I see that that is the whole object with which this legislation is introduced, according to the lucid explanation which Your Excellency graciously supplied to the Council, and the speech which the Hon'ble the Home Member has made, it appears to me that, so far as the principle underlying this legislation is concerned, there is no real difference of opinion. It appears to me however, that, in giving effect to the intention which Government have in view in legislating in these two directions, the wording actually employed goes much beyond it, and it is with some feeling of apprehension that I regard the all comprehensive character of the provisions which are embodied in the Bill. Your Excellency will observe that the first part of clause 3, sub section (1), deals with matter relating to the war, while the second part is worded as follows —

'Or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, or of criminal conspiracy to commit or of abetting, or of attempting to commit or abet any such offence shall be tried by Commissioners appointed under this Act.'

Your Excellency can appreciate that there are grounds to apprehend that powers conceded in words so wide and comprehensive may be exercised in matters other than those for which the present legislation is being enacted, and the reason why we consider it necessary to restrict the terms of the Bill specifically to the objects with which it is undertaken

The preamble to the legislation says —

'Whereas owing the existing state of war, it is expedient to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences'

The objects of his Bill are here clearly indicated. I have already pointed out, that so far as special measures to secure public safety and the defence of the British Empire are concerned, there is absolute unanimity in this Council. Then as regards the more speedy trial of certain offences, offences which have been indicated by the Hon'ble the Home Member in his speech, there is also a practical unanimity. If that is so, Your Excellency, may I venture to suggest that the wording of the measure be restricted to what Government themselves

desire, instead of employing such comprehensive terms as to embrace all such offences as ought to be allowed to be tried in the ordinary procedure of the existing law courts. Your Excellency, though the principle underlying this Bill has been whole-heartedly supported, it has been clearly pointed out by many members that there are certain provisions of the Bill which go much beyond the intention with which this legislation has been brought forward. If that is so, I do not know whether it would not be desirable to ask the Hon'ble Member to consider whether he would not agree to so modify the provisions of this Bill as to restrict their application to offences contemplated by Government, and thereby ensure the unanimous opinion of this Council in favour of the measure.

Sir, it need hardly be said that offenders coming either under the first part of this Bill dealing with the war, or those who fall within the second classification, namely, who are responsible for organized lawlessness and dacoities, can have no sympathy from any quarter whatsoever, and it appears to me that if there is any justification for an emergency measure to be carried at one sitting in this Council, it can only be supplied by the fact that the requirements of peace and order require summary treatment in the trial of special and extraordinary offences. I do not think that it would be justifiable to provide in such special legislation for any class of offences which ought ordinarily to be brought before the existing law courts.

As I have already said, I wish to associate myself with my Hon'ble Colleagues in supporting the principle of the measure the object of which is to provide additional powers to the Executive Government for the purpose of dealing with the situation. I do hope that armed with the special powers which the present legislation, with such amendments as may be made, will confer upon Government, they will be able to prevent the lawlessness in the Punjab from assuming epidemic form. I need hardly assure Your Excellency that the people of India heartily desire to co-operate with Government in their efforts to promote the cause of peace and order.

The Hon'ble Pandit Madan Mohan Malaviya:—My Lord, in the course of the remarks which Your Excellency was pleased to make at the beginning of this debate, you were pleased to tell us that the measure before the Council is a war measure, and you were also further pleased to assure us that no slur would be cast on the fair name of India by the passing of this measure. In spite of this assurance from Your Excellency, some fears have been expressed that the passing of such a measure as is before the Council may throw a sort of reflection upon the loyalty of the people of India in general. I have no such fear. I am certain, My Lord, that the misguided action of a few young men or old men, whoever they may be, will not, cannot, weigh in the balance against the deliberate, deep-seated and pervading loyalty of the people of India throughout this crisis. Hopes have also been expressed that, when the crisis is over, the good that has been done by Indians will be remembered and the evil perpetrated by a few will be forgotten. I do hope it will be so. But I think, My Lord, that at this juncture neither fears nor hopes should guide our action. I would 'trust no future how'er pleasant,' would 'let the dead past bury its dead,' act firm in the living present, heart within, and God, o'er head. The living present demands from us that in the exceptional circumstances which have been created by the war, we should lend our loyal support to the Government in adopting every measure which is necessary in order to prevent and crush mutinous acts, to preserve public peace and to protect the civil population, the law-abiding people, from the evils of the misguided action of a few ill-balanced minds. We are all agreed, as the debate has shown, to the principle of the measure so far as it is needed by the exigencies of the situation for securing the public safety and the defence of the realm. But, My Lord, while it is the duty of us, non-official as much as official members of the Council, of rendering support to the Government in the emergency measure

which they find, in the special circumstances of the country, necessary to enact, it is also the duty of the Government strictly to limit the measure to the requirements of the situation. Mention has been made of the fact that the Defence of the Realm Act received the unanimous support of both parties in the House of Commons and throughout the country in England. It rightly did so, because the provisions of the Defence of the Realm Act were studiously confined to the requirements of the situation created by the war. I am sorry to say, My Lord—I say it with much regret, but I feel it my duty to say so—that in framing the Bill which is before the Council the advisers of the Government have not confined themselves to the requirements of the situation. I am sorry to say, as many previous speakers have pointed out, that the framers of the Bill have travelled much beyond the requirements of the situation, and this, My Lord, is the reason of the dissentient voices which have been mingled in the speeches made before Your Excellency in offering support to the principle of the Bill. My Lord, I will make my meaning clear. In the Defence of the Realm Act it is laid down that “His Majesty in Council has power, during the continuance of the present war, to issue regulations as to the powers and duties of the Admiralty and Army Council, and of the members of His Majesty’s forces, and other persons acting in his behalf, for securing the public safety and the defence of the realm, and may, by such regulations, authorise the trial by courts martial and punishment of persons contravening any of the provisions of such regulations designed—

- (a) to prevent persons communicating with the enemy or obtaining information for that purpose, or any purpose calculated to jeopardise the success of the operations of any of His Majesty’s forces, or to assist the enemy, or (and this was added by a subsequent Act) to prevent the spread of reports likely to cause disaffection or alarm,
- (b) to secure the safety of any means of communication, or of railways, docks, or harbours, or of any area which may be proclaimed by the Admiralty or Army Council to be an area which it is necessary to safeguard in the interests of the training or or concentration of any of His Majesty’s forces,

in like manner, as if such persons were subject to military law, and had on active service committed an offence under section 5 of the Army Act, and may by such regulations also provide for the suspensions of any restrictions on the acquisitions or user of land, or the exercise of the power, of making bye-laws, or any other power under the Defence Acts, 1842 to 1875, etc.”

Now, Your Excellency will be pleased to note that the entire power which is given by the Defence of the Realm Acts, 1 and 2, is confined to enabling the Admiralty or the Army Council to deal with cases where the public safety or the realm may be endangered and to enable them to remove restrictions on the acquisition or user of land which may be needed for military and naval purposes.

My Lord, the Bill before us goes, as I have submitted much beyond the provisions of that Act. I have no doubt not seen the regulations which have been framed under those Acts. Last evening I requested the Hon’ble the Home Member—I hope he will pardon my mentioning it—for a copy of these regulations, but he could not spare it. I quite understand that he could not, and I do not complain of it. I wrote this morning to the Hon’ble the Secretary to the Legislative Department (who, I was told by the Hon’ble the Home Member, had a copy of the regulations) asking for it, but he, too, said he could not spare it. Now my Lord, we are in this position, that a copy of the Bill was given us during the course of another debate here yesterday. We have not been given a copy of the regulations on which we are told this Bill has been modelled to enable us to arrive at a judgment in regard to the provisions incorporated in the Bill. And we must, therefore, act, according to the light

which is within us I feel that the regulations which have been made under the Defence of the Realm Act cannot go beyond the clear provisions of that Act, and judging from the clearly defined and strictly limited provisions of the Act, we think that the provisions embodied in the Bill before us go much beyond them. If, therefore, My Lord, there is this general note in the speeches of non-official members to-day of desire to see changes introduced in the Bill, and to have a discussion regarding some of its provisions, I hope it will not be set down to any reprehensible wish on the part of the non-official members or of those who have raised a dissentient voice or asked for some modification, to unnecessarily oppose the Government. In the special circumstances in which the Bill has been introduced we are all united in rendering our dutiful support to the Government in all that is needed for the exigencies of the war. But we feel it our duty as well to the Government as to the public to request the Government to strictly confine the provisions of the proposed law to the needs of the situation,—and not to allow, under the garb of a war measure, provisions to be enacted which are not required by the situation and are likely unnecessarily to disturb the public mind.

My Lord, there are a few points to which I will invite Your Lordship's attention. Beginning with the Hon'ble Raja Jai Chand and the Hon'ble Sir Gangadhar Chitnavis, and ending with the last speaker, if I am not mistaken, every speaker has asked that certain provisions should be revised.

The criticism may be classified under three heads—the scope of the measure, the constitution of the special tribunals proposed, and the punishments to be inflicted in certain cases. As regards its scope, attention has been drawn to a provision which has been incorporated in section 3 of the Bill, by means of which any person accused of any offence punishable with death, transportation or imprisonment for a term which may extend to ten years, has been brought under the purview of the present Act. Now, that practically abolishes the provisions of the Criminal Procedure Code for the trial of these ordinary offences. The Hon'ble the Home Member stated that it is not intended, and I do hope it is not intended, that the ordinary law should be superseded for the trial of ordinary offences. Now, then, has this very important provision crept into the Bill, or has been allowed to come into the Bill, which does in clear words supersede the ordinary law for the trial of ordinary offences?

In other respects also the Bill has been extended beyond the needs of the situation, as some other members have pointed out. I may draw attention to one other such provision. Under the English Act, as I have already said, the King in Council may make regulations, among other purposes 'to prevent the spread of reports likely to cause disaffection or alarm'. In the Bill before us rules may be made to prevent the 'spread of false reports or reports likely to cause disaffection or alarm.' The words 'false reports' have been put in. Now, My Lord in this country, with a population so ignorant as it unfortunately generally is—with the people not trained to such a degree as to be able to discriminate between what reports should be repeated and what reports should not be repeated, a provision like this is likely to cause trouble and may possibly lead to injustice. I hope the Hon'ble the Home Member will explain to us why it was necessary, having the precedent of the English Act before us, to introduce the words 'false reports' into this Act. So much as regards the scope of the measure.

The second point of difference which arises from the debate is the constitution of the tribunals which are to be constituted under the Act. It has been said on behalf of Government that the provision of special tribunals of three Commissioners is a much better measure than leaving Courts Martial to deal with persons to be tried under the Act. That, My Lord, is only one aspect of the question. The other aspect is that Courts Martial could not possibly

be expected or called upon to deal with the numerous offences which have been brought under the purview of this Act and made punishable under it, and therefore the framers of the Act found it necessary to provide for special tribunals of Commissioners appointed under the Act. There is reason, My Lord, in support of the view that there is no clear necessity or justification for creating special tribunals of the kind proposed by the Bill, and that special benches, constituted under the provisions of the Indian Criminal Law Amendment Act of 1908, would have inspired more confidence and ensured a more satisfactory administration of justice. The constitution of the tribunals proposed under the Bill is only in one respect, but in a material respect, different from the constitution of the tribunals under the Act of 1908 to which I have referred. Under the Bill at least two of the Commissioners may be of much less experience than a Judge of the High Court, who alone can constitute a Special Bench of three Judges under the Act of 1908. Your Lordship will please note that several Members have expressed the opinion that it would not be right to allow Sessions Judges or Additional Sessions Judges who have served only one year as such to be members of the special tribunals which would deal with special offences under a special and somewhat summary procedure. That much with regard to the constitution.

The third point to which attention has been drawn is the punishment of death provided for certain cases. A sentence of death may be a proper sentence in certain cases, and no one may object to this punishment being inflicted under certain circumstances upon those who conspire against the King. But when a summary procedure is prescribed for the trial of such cases, it does seem to be a matter for consideration whether a sentence of death should not be omitted from the category of punishments provided in such cases. Section 2 (2) of the Bill says—

Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, or if the intention of the person so contravening any such rule or order is to assist the King's enemies or to wage war against the King, may provide that such contravention shall be punishable with death, transportation for life or imprisonment for a term which may extend to ten years, to any of which punishments fine may be added.

Now, My Lord, to my mind it is questionable—I may be wrong, I speak subject to correction—whether a person proved guilty of contravening any of the rules made under this section, even with the intention of waging war against the King, should not be regarded as a person deserving of worse treatment than a man who has been openly fighting against the King's forces. A prisoner taken in war is not shot down—not by our Government at any rate, and I thank God he is not. A prisoner taken in war is interned, and will not the ends of public safety and of justice be fully met if an offender of the type we are considering is so interned, or transported for life, or imprisoned for any term which the Court may think proper. My Lord, there is always a danger of irrevocable injustice in the case of a death sentence. Such danger is enhanced where the trial is more or less of a summary character. I may refer here to the Pansey murder case, in which a man was ordered to be hanged by the High Court of Madras, but was acquitted by their Lordships of the Privy Council—a case in which my friend Mr. Eardley Norton rendered memorable service to the cause of justice. There is also another case, the Mahta case of Manbhumi, where a person who had been sentenced to be hanged by the neck until he was dead, and whose conviction had been upheld by the High Court and whose appeal to the Local Government and the Government of India for mercy had been refused was yet saved from the gallows by the truth being disclosed by the very person in whose interest he had been convicted and condemned. These, My Lord, are cases which have occurred in this country. In the House of Commons Lord Parmoor referred to the case of the German

Consulat Sunderland, who had been tried for high treason before a Judge and Jury and convicted and sentenced to death, and in whose case the Lord Chief Justice and other Judges had found unanimously that the crime had not been proved. These cases afford us some guide and ought to make us pause to think whether in summary trials it would be right to allow sentences of death to be passed when in such cases the injustice that may be done must be irretrievable.

These are some of the points which have been troubling my Hon'ble friends who have spoken before me, and these are the points which have troubled me also. The result is that while we give our loyal support to the measure as a war measure, in so far as it is necessary to meet the exigencies of the war, we request Government to be pleased to have the measure thoroughly considered in order that those provisions which are not necessary should be taken out of it. My Lord, I see from the Agenda paper of the business before the Council to-day, that it is proposed to ask for leave to have this measure passed to-day. Yesterday we made a representation to the Hon'ble the Home Member that the measure might be referred to a Select Committee in order that it should be there discussed and that points of difference may be better appreciated and understood. I hope that the request will meet with Your Excellency's approval and with the acceptance of the Government and that an opportunity will be given to the representatives of Government and the representatives of the people to sit down together to retain as much of the measure as is needed, and as much as it is our duty to support at this juncture in view of the war, and to remove such provisions as do not seem to be called for by the exigencies of the situation.

With these words, My Lord, I give my support to the principle of the Bill, and I hope that the Bill will be referred to a Select Committee and not passed in its present form.

The Hon'ble Raja Abu Jafar — My Lord, it is obvious that the present state of affairs has rendered it necessary to provide for emergency measures, and the Bill brought before the Council to-day is one of them. Considering the unusual state of things which has been brought about by the present war, no reasonable person will oppose the principle of this Bill (though there is some difference of opinion as to some of its details). There was not sufficient time for us to think over the details of the Bill in the usual manner, but the Government cannot be reasonably expected to observe the ordinary rules of legislation on such an extraordinary occasion. I believe there are circumstances that justify such a measure. I have full confidence in the Government taking this action, and I trust that the powers provided by the Act will not be misused by the authorities entrusted therewith, and its application to the civil population would be made with the utmost caution and deliberation.

It is clear from the provisions of the Bill that it is only a temporary measure taken as a precaution against the exigencies of war, and it will cease to have effect six months after the termination of the war.

Taking into consideration the emergency of the situation and the limited duration of the measure, I think myself quite justified in giving my whole-hearted support to it.

The Hon'ble Raja Sir Muhammad Ali Muhammad Khan — My Lord, I submit my grateful thanks to you for the manner in which you have given expression to your feelings towards my country and my countrymen. This is not a Bill that could enlist the support of any Indian in normal times. I personally would regard it as a great misfortune if its provisions were considered necessary in ordinary times for governing a loyal and peaceful country.

like India, for the provisions contained in the Bill are subversive of the wise and beneficent methods of administration with which British rule is associated. It is a serious matter, My Lord, to supersede the ordinary judiciary of the country and to introduce sudden and revolutionary changes in the criminal law of the country without consulting the people. The Bill is highly drastic, and were it not that we are going through critical and abnormal times and that the proposed legislation is put forward as an exceptional and temporary measure I would have certainly opposed its passage through this Council. In the peculiar circumstances, however, of the position of the Empire, I recognise that it is not open to us to offer any opposition to the principle of the Bill, but I am gratified that our consent will not be regarded here or in England as an admission that India is disloyal or even lukewarm, for nothing can be more untrue to the real facts. My Lord, I refrain from opposing the principle of the Bill, because our Viceroy, who is beloved and trusted by the Indians and who has unstinted confidence in them, has considered it essential to put forward the Bill as a war measure only. My Lord, it is to be hoped that the Empire will soon emerge from this struggle and that the Statute-book will not suffer for long from the disfigurement which this legislation will inflict upon it. I also sincerely trust since the Bill can obviously be a double-edged weapon, that Your Excellency's Government will use the utmost care and vigilance to guard against any misuse of its provisions by the local authorities concerned. I also appeal to the Hon'ble Mover that he would give sympathetic consideration to the points raised by many Hon'ble non-official Members.

The Hon'ble Maung Mye —My Lord, speaking on behalf of the people of Burma, I beg to give my full and hearty support to the Bill.

The Hon'ble Mr. Rayaningar —My Lord, I sincerely support the Bill in all its essential features, however much I may regret the circumstances which necessitate its introduction. Though we cannot have an exact idea of the real situation, we have the fullest confidence in Your Excellency's Government and when the Government finds itself unable to cope with the situation, we must co-operate with it in strengthening its hands. My Lord, in a crisis like the present we may, by showing any reluctance on our part in supporting the measure, be doing more harm than good to our interests. We want peace and order, and if for the maintenance of peace and order an emergency measure is required, we cannot but adopt it. That is the consideration, My Lord, which underlies our vote to-day. We are taking upon ourselves a serious responsibility, our people's interests are in our hands, and when we support the Government in this new measure, we do so in the fervent hope that the new law would be put into operation in as few cases as possible, and that under the pressure of extreme necessity. My Lord, I think the Bill requires modification in a few particulars. I think that the provision which gives retrospective effect to the law is unnecessary. I am also of opinion that capital punishment, except in extreme cases, is too much. I would suggest, for the consideration of Government, if clause 3 can be so amended as to be more acceptable. My Lord, we are deeply grateful to Your Excellency for the assuring words which Your Excellency has given expression to on this occasion.

The Hon'ble Sir Reginald Craddock —My Lord, I feel sure that Your Excellency will be gratified by the manner in which the non-official members of this Council have supported the principle of this Bill. Neither we nor they take any pleasure in putting forward and passing any drastic measure of this kind. As I explained in my opening speech, a long period has elapsed before this step was found to be necessary, and Your Lordship has stated, to which I need add no words of my own, that you do not consider that legislation of this kind involves the slightest slur upon the loyalty of India. In a country with such a vast population, there must be some lawless elements, as long as they keep quiet no drastic action is found necessary. When they begin to show signs

of disturbance, then public safety and security demand that action should be taken to meet that attitude on their part. On the whole, I think that practically every member has supported the principle of the Bill. Even in the case of the Hon'ble Mr. Banerji, I was not able to gather for certain whether he was actually opposing the Bill or merely giving it a reluctant support.

There were several points of criticism brought forward, and as regards some of these if at a later stage they take the shape of specific amendments, we shall be able to consider whether we can accept any of them, or if we are unable to accept them, will be able to explain the reasons for non-acceptance. As to the objection taken that clause 3 of the Bill extends far too wide the scope of the Bill including, besides offences that would be created under clause 2, all offences punishable with death, transportation or imprisonment for a term which may extend to seven years, in respect to that, the difficulty felt was to find some comprehensive term which would allow offences punishable under various Acts to be referred, if necessary, to a tribunal of this kind, and a long schedule of offences which even with much care might still fail to comprise all the cases that it might be necessary to refer to the tribunal was not considered a satisfactory method, because it is not merely a particular class of offender whose speedy trial is required. Possibly, if some less comprehensive term can be found to include all we want, the objection might be considered, but I am not able offhand to give any assurance in this matter. I may just add a few remarks with respect to one or two criticisms that have been made by the Hon'ble Mr. Banerji and the Hon'ble Pandit M. M. Malaviya. As regards the criticism against sub-clause (c) regarding the promotion of feelings of enmity and hatred between different classes of His Majesty's subjects, the English Regulation does not of course refer explicitly to that particular class of report. We have generally followed Regulation No. 27, which runs as follows—

'No person shall by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication spread false reports or make false statements, etc., etc.'

This—i.e., in regard to false statements—is one of the objections which the Hon'ble Pandit Malaviya took to the wording of sub-clause (c) of clause 2, but as regards the reference to promotion of feelings of enmity and hatred towards His Majesty's subjects to which the Hon'ble Pandit took exception, I wish to point out to the Hon'ble Pandit that the rules are intended to prevent the spread of false and injurious reports, and power is taken to make rules to prevent the spread of reports which are likely, amongst other things, to promote feelings of enmity and hatred between different classes of His Majesty's subjects. Now in the circumstances of this country, it is natural that when dealing with the public safety, we should safeguard the spread of reports that are likely to endanger the public safety. The prevention of reports which promote feelings of enmity and hatred between different classes of His Majesty's subjects is essential as they may seriously prejudice the public safety.

I do not wish, my Lord, to go into further detail regarding the criticisms that have been passed because they will be considered at a later stage, I would only ask that, as we have received such full support to the principle of the measure, Your Lordship will put the motion to the Council.

The motion that leave be given to introduce the Bill was put and agreed to.

The Hon'ble Sir Reginald Craddock—My Lord, I now beg to introduce the Bill and to ask Your Excellency to suspend the Rules of Business to admit of the Bill being taken into consideration.

His Excellency the President—I suspend the Rules of Business, and I think that the most convenient method of procedure would be, when the motion that the Bill be taken into consideration has been carried, to put the Bill to the Council clause by clause under Rule 31. Each clause will then have to be dealt with separately, and when the amendments relating to it have been discussed,

I shall put the question to the Council whether that clause stand as part of the Bill

The Hon'ble Sir Reginald Craddock —My Lord, I beg to move that the Bill be taken into consideration

The motion was put and agreed to

The Hon'ble Sir Reginald Craddock —My Lord, I beg to move that clause 1 of the Bill do stand as part of the Bill

The motion was put and agreed to

The Hon'ble Sir Reginald Craddock —My Lord, I now beg to move that clause 2 do stand as part of the Bill

The Hon'ble Mr. Dadabhoy —My Lord, I beg to move a small amendment as regards clause 2 (h) Clause 2 (h) at present reads as follows —

(h) to prohibit anything likely to prejudice the training or discipline of His Majesty's forces and to prevent any attempt to tamper with the loyalty of persons in the service of His Majesty or to dissuade persons from entering the service of His Majesty'

My amendment, My Lord is that after the words 'entering the' the words military or police' be added The object of this clause, as I understand it, is not to prevent people from dissuading their friends and relatives entering the service of His Majesty generally, but to facilitate recruitment, and as I understand that there is some opposition shown in some parts of the country in the matter of military recruitment and also in the recruitment of the police, this clause is rendered indispensable

My Lord, the non-official members of this Council are as anxious as the Government that the recruiting in the country should not be in any way hampered, or any impediment put in the way of recruitment both for the Army and for the Police But as this clause stands at present, there is a likelihood of its being extended to other departments If I have a brother, a son, or a nephew, and he wants to become a munsiff or join the Educational Department, and if I dissuade him from doing that, I may be hauled up and brought within the pale of this law It is not the intention, My Lord, of your Government to bring these cases within the Act The intention is, I understand, to prevent undue interference with the question of recruitment for the Army and the Police The Police is, of course, a civil department, but as this is a piece of legislation of an emergent nature, I am prepared to agree that the word Police be also added, and I am sure the Hon'ble the Home Member will see his way to accept the amendment

The Hon'ble Sir Reginald Craddock —My Lord, I may say at once on behalf of the Government that I will accept that amendment

The question that in clause 2 (h), after the words 'entering the' the words 'military or police' be inserted was put and agreed to

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, I propose that in clause 2 (I) instead of the words 'public servants and other persons,' the words 'District Magistrates, Sub Divisional Officers or other competent military authority' be substituted

My Lord, in the Defence of the Realm Act, as I have already submitted, the special emergency powers conferred by the Act are conferred upon the 'competent naval or military authority', and the regulations which have been made under that Act, a copy of which, thanks to the courtesy of Mr Muddiman, I now have before me, distinctly provide that the powers conferred by them shall be exercised only by the competent naval or military authority My Lord, the words 'public servants or other persons' used in the Bill before us are extremely wide, the

whole object of the war legislation is to secure that the competent naval or military authority,—

His Excellency the President — Will the Hon'ble Member kindly let me see his amendment ?

The Hon'ble Pandit Madan Mohan Malaviya — Your Excellency will pardon me. We have had to work against time. I have introduced the words 'and other competent military authority' in the amendment I propose.

His Excellency the President — You should have given notice of it beforehand.

The Hon'ble Pandit Madan Mohan Malaviya — I gave notice of it this morning, as soon as I came here. My object is that the special powers with which the Bill proposes to arm the Executive should be confined to District Magistrates, Sub-Divisional Officers and any competent military authority. The language used in the Bill is very wide, and, as I have submitted, there is no sanction for it in the regulations which have been framed in the United Kingdom in which the competent military or naval authority only is authorised to exercise the special powers conferred by the Act. That is my amendment.

The Hon'ble Sir Reginald Craddock — I am afraid that I cannot accept the amendment on behalf of the Government. A reference to the clause will show at once that the Governor General in Council makes rules as to the powers and duties of public servants and other persons in furtherance of that purpose. The Hon'ble Mr. Malaviya at the last moment has inserted in his amendment 'or competent military authority' because he has recognized that, but for that, he would be striking at the very root of the Bill which is based on the Defence of Realm Act wherein Military and Naval authorities are given such extensive powers. But, apart from that, is is a question of powers and duties of all sorts of public officers. District Magistrates and Sub-Divisional Officers may very likely be given powers and duties and so may many other officers; the police and even village officers may have duties assigned to them, and even private citizens. Therefore it is quite impossible to accept the amendment.

The amendment was put and negatived.

The Hon'ble Mr. Banerji — My Lord, I beg to move that after clause 2 (1) (c) the following proviso be added — 'Provided that the latter part of clause (c) beginning with the words 'or to' in line 4, up to the end, be not given effect to in any province except by a vote of the local Legislative Council'. My Lord, I might have moved for the deletion of this part of the clause because these words are a reproduction of the provisions of sections 153 (a) of the Indian Penal Code. I need not read that section. Then, as regards offences committed by newspapers, we have a similar section in the Press Act. Therefore, I might have moved for the omission of these words altogether. But I find that there is a desire in the Punjab for speedy procedure in dealing with these matters. Therefore, My Lord, I have ventured to put in the proviso that I have read out, so that in case local opinion should support the Government in adopting this procedure then only they should be empowered to do so. The object is, to some extent, to have the action of the Executive Government controlled by the authority of local opinion, so that nothing should be done under the provisions of this section except with the consent of the local legislature. In my province the local legislature undoubtedly has a non-official majority, but I am a member of the Bengal Legislative Council, and I have been there for the last two years and more, and I find that only on one occasion was the Government defeated. During the whole of that time every measure of the Government, every Resolution that the

Government supported was carried, and every Resolution which it opposed was lost. Therefore, really, there would be no risk whatsoever, but, on the contrary, some slight association of the local representatives with the operation of a measure like this would, I think, tend to facilitate the administration of this law. With these words, I beg to move the amendment.

The Hon'ble Mr. Wheeler—My Lord, I venture to think that this amendment is not one which should commend itself to this Council or be accepted by Your Excellency's Government. It overlooks the whole fundamental basis of section 2, and, considering that the condition which necessitates the passing of these rules do not differ materially in different parts of the country, it would be a most curious and unusual state of affairs to have an act declared to be an offence in one province and not in another. Neither are the particular matters with which the rules will deal confined within provincial boundaries, while there is the third objection that nothing could be more prejudicial to the speedy disposal of offences, which it is sought to secure by this measure, than having to wait until the approval of the Legislative Council in any one province could be obtained before a particular rule was enforced.

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya—My Lord, I do not press my first amendment to clause 2 (I) (c) that the words "False reports or" be omitted from the first line. I beg Your Lordship's leave to withdraw it.

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya—My Lord, I move that from clause 2 (c) the words 'or to promote feeling of enmity or hatred between different classes of His Majesty's subjects' be omitted. I do not think, My Lord, that there is any need for any special provision of this kind in the emergency measure before us. There is already sufficient provision in the existing enactments to deal with a case which might arise under the clause in question. I therefore move that these words be omitted.

The Hon'ble Sir Reginald Cradlock—My Lord, I cannot accept this amendment on behalf of the Government. Before the adjournment I made some remarks on the subject in answering the Hon'ble Pandit's speech. This particular kind of report, *viz.*, one which is likely to promote feelings of enmity and hatred between different classes of His Majesty's subjects is no doubt not a kind of report which would be very common in England, and, therefore, the English Act did not take cognizance of such reports. But there is no kind of report in this country which is more likely to be spread than the one mentioned in this clause, and there is no kind of report which is likely to do more harm and damage, and possibly excite more breaches of the peace than a report which is likely to promote feelings of enmity and hatred between different classes of His Majesty's subjects. Therefore, My Lord, I submit that this is a very proper inclusion in this clause among the reports which we wish to check, and that this amendment therefore cannot be accepted.

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya—My Lord, I beg leave to withdraw my amendment to clause 2 (1) (c), that after the word, 'purposes' the words, 'subject to the payment of compensation,' be introduced.

The amendment was by permission withdrawn.

The Hon'ble Mr Banerjee —I beg to move this proviso to clause 2, sub-clause (1) (f) —

' Provided that a person feeling aggrieved at such an order may appeal to the Commissioners appointed under section 3, or the District Magistrate or the Chief Presidency Magistrate of Calcutta, as the case may be '

The object of this proviso is to give the right of appeal to a person who feels aggrieved—

His Excellency the President —Are those the words in your motion as submitted to the table ?

The Hon'ble Mr Banerjee —No, My Lord, I have added the words, "Chief Presidency Magistrate or the Magistrate of the District" I had a consultation with Mr Muddiman (Deputy Secretary to the Government of India in the Legislative Department), and I put in these words to meet a legal difficulty. The text, as before Your Excellency, reads as follows —

' Provided that a person feeling aggrieved at such an order may, where section 3 to 11 of the Act have been extended to any area, appeal to the Commissioners appointed under section 3 '

That, My Lord, is my amendment. The object of the proviso is to give a person feeling aggrieved at an order of internment the opportunity of submitting his case to a competent tribunal in order to have the facts tested upon which the internment has been ordered. And this is only a matter of fair play and justice to an individual who has been subjected to this disability. I understand that this proviso is not in the English Act. But, My Lord, we have not been following the English Act section by section or clause by clause. We have been making some departures in a restrictive direction. I think we may make one in a liberal direction also.

The Hon'ble Mr Wheeler —I venture to think that there is some misunderstanding underlying this amendment. In the form in which it has been moved it would not be workable. The Commissioners to whom the Hon'ble Member has referred will be appointed for the trial either of an offence committed by a breach of the regulations or of the other wider offences which have been made cognizable by the tribunal. It might very well happen, and would ordinarily happen, that at the time an order was passed under clause (f) there would be no Commissioners in existence. It is quite contrary to the whole spirit of the Bill to convert the three Commissioners into an Appellate Court against the orders of executive officers, and would seriously impede the passing of those orders, which is the object for which the Bill provides. I would, therefore, oppose the amendment.

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, I beg leave to withdraw the amendment to clause 2 (1) *b, c*, that the word, military, should be inserted before the word, "service," as an identical amendment has I, understand, already been accepted.

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, I beg to move that from clause 2 (2) the word 'death' be removed. I stated the reason for this amendment earlier in the day. I think, My Lord, that in cases where there is provision made for a summary trial, it is desirable that the extreme sentence should not be passed, the ends of justice will be met by transportation for life or imprisonment for a term which may extend to ten years, as the section provides.

The Hon'ble Sir Reginald Craddock —On the subject of this amendment I think it is very likely that the cases will be rare in which a sentence of death will be passed. But it would be a mistake to withdraw the power of inflicting capital punishment, because there might be cases in which no other punishment could adequately meet the crime. In the remarks that he made in his speech this morning, the Hon'ble Pundit suggested that men who assist the King's enemies or wage war against the King ought to be treated like prisoners of war, namely, enemy subjects who are fighting for their own King and who happen to have been captured. This is a contention which it is impossible to accept. The prisoner of war is a subject of a foreign power who owes no allegiance to the Sovereign of the country in which he is interned. But if a subject be found, in contravention of those rules, to have either assisted the King's enemies or waged war against the King, he is nothing but a rebel or a traitor, and all civilised countries provide that in extreme cases the penalty of death may be inflicted on such persons. Therefore, My Lord, we cannot accept this amendment.

The amendment was put and negatived.

The question that clause 2 as amended stand as part of the Bill was then put and agreed to.

The Hon'ble Sir Reginald Craddock —I now move that clause 3 stand as part of the Bill.

The Hon'ble Mr Surendra Nath Banerjee —My Lord, I move that in clause 3(1), after the words 'in writing' the words 'subject to a vote of the local Legislative Council' be inserted.

The appointment of Commissioners is left to be decided by the Local Government, which means the Executive Government. I am sure Your Excellency's Government would like to have educated opinion associated with them in the appointment of the Commission. If this is done, the work of the Commission, by enlisting public opinion on its side, will be facilitated.

It seems to me that no harm can accrue and there is no risk of friction or collision. For in the local Legislative Council the Government will practically have its own way. The views of the Executive Government will nearly in all cases be accepted by the Legislative Council. It would be a distinct advantage if the decision of the Executive Government were confirmed by the Legislative Council. These are my reasons for submitting this amendment to the acceptance of this Council.

The Hon'ble Mr Dadabhoy —My Lord, in connection with the consideration of Mr Banerjee's amendment, I take the liberty to place before the Council a somewhat modified proposal. I would put my amendment in a form which I have no doubt will be acceptable to the Hon'ble the Home Member. We have heard a great deal this morning about this section and the great and sweeping powers that this section allows. I think that, if my amendment is accepted by Government, it will in a way allay the feeling that the Hon'ble Members here as well as the public generally have, and it will also serve as an effective check on the executive. I disagree with my friend the Hon'ble Mr Banerjee and propose the following amendment, namely, that after the words 'Local Government' the words 'with the previous sanction of the Governor-General in Council' be added.

The Hon'ble Sir Reginald Craddock —My Lord, I beg to rise to a point of order. This amendment of Mr Dadabhoy's has apparently no connection whatever with the amendment put forward by Mr Banerjee.

Mr Banerjee's amendment, as I understand it, is that in clause 3 (1) the words should run as follows —The Local Government may, by order in writing subject

to a vote of the local Legislative Council, direct that any person, etc. Well, My Lord, the whole scope of the provision is that wherever it is in force in a province, the Local Government may, finding disorder gaining ground, direct the constitution of a special tribunal and direct that any person accused of a serious offence which it is considered should be speedily tried, should be tried by that tribunal. It is clearly a matter on which it is quite impossible for us to take the vote of a local Legislative Council. It might not even be sitting, and in any case it is quite impossible to refer individual cases to the consideration of a local Council. Therefore, My Lord, I cannot accept the amendment.

The amendment was put and negatived

The Hon'ble Mr. Dadabhoy—My Lord, I now press my objection. I suggest that the words 'with the previous sanction of the Governor-General in Council' be added after the words Local Government. I have already said what I had to say on the subject a few minutes ago. I have heard the Hon'ble the Home Member who stated that the object of this legislation is to expedite matters. That is a very important object, but in these days of rapid communication, railways, land telegraphs, the Governor-General in Council's order could be obtained within a few hours, and I hope, therefore, the Hon'ble the Home Member will see his way to accept this modest suggestion of mine. It will allay public feeling on the subject. The section is of a very drastic character. A lot has been said on it this morning, and I do not wish to repeat what has been said, as it is still fresh in the minds of Hon'ble Members. I therefore request the Hon'ble the Home Member to see his way to accept this, and, as I said before, it will be a very valuable check on the Local Government, and it will allay public feeling considerably on the subject.

The Hon'ble Mr. Rayanagar—My Lord, I support the Hon'ble Mr. Dadabhoy's amendment.

The Hon'ble Sir Reginald Craddock—My Lord, I am very sorry, but I cannot possibly accept this amendment. In the first place, the Hon'ble Member seems to overlook that section 3 can only come into force at all by notification of the Governor-General in the Council. That being the case, the Local Government will have had to establish a case to the satisfaction of the Governor-General in Council that this procedure of speedy trial has become necessary within a part or whole of a province. When once that is done, it is surely superfluous to require the Local Government to refer every case, when they wish to send a criminal to the special tribunal, for the orders of the Governor-General in Council. If a Local Government is fit to administer its province at all, it can surely be trusted to see that a special tribunal of this kind is used only for the cases for which this Bill has been designed. It would cause much irritation and it would be quite impossible for the Governor-General in Council to dictate all the circumstances that might make a trial of this kind desirable, once the power has been given to the Local Government on good cause established, it would be quite unreasonable to require the Local Government to apply for further sanction from the Governor-General in Council. I am sorry that I must oppose this amendment.

The amendment was put and negatived

The Hon'ble Pandit Madan Mohan Malaviya—My Lord, I beg to move that from clause 3(1) the following words be omitted—'or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years.' My Lord, I fail to see why the insertion of this clause is needed in this emergency measure. There is already sufficient provision in the existing enactments of the country to deal with cases, which may arise, of this character, and I hope that the Hon'ble the Home Member will see his way at any rate to omit this clause from section 3(1).

The Hon'ble Mr Banerjee —My Lord, I had the same amendment and I thoroughly associate myself with the observations which have fallen from my friend. A large number of cases, such as burglary, rioting and so forth, which are included in the Penal Code, will be tried by the Commissioners under this section and under a summary procedure, which I think would be dangerous to the liberty of the subject, there is no occasion for introducing this large class of cases in this clause, and subject to a summary procedure in which there is some chance of justice not always being done, I thoroughly associate myself with the observations of Mr Malaviya.

The Hon'ble Sir Reginald Craddock :—My Lord, the Government cannot possibly accept this amendment, because it would strike at the root of the whole object for which these speedy trials are designed. I mentioned in my opening speech the various kinds of lawlessness which it was desired to suppress, and among those were outbreaks of lawlessness in which large bands of men plundered whole villages, wrecked shops and destroyed houses and property. When gangs of men go abroad in this manner they may commit very many different offences under the Penal Code, and of course it would be impossible to make a scheduled selection of offences that might be tried or might not be tried by this tribunal. As a matter of fact although Hon'ble Members have chosen to describe this trial as a very summary one, as if in fact it was a summary one under the Criminal Procedure Code, the trial will differ very little from the ordinary trial of warrant cases before a Magistrate, or a sessions case before a Sessions Judge. It may be that the evidence is not recorded in full detail, but all the other features will be the same, and it would be quite impossible, therefore, to exclude these serious offences from the jurisdiction of a special tribunal of this kind. If we were to do so we should be taking away from a Local Government the power to deal with those very cases for which it is specially asked for powers to be given under this Bill. I have already explained once that it was not intended to withdraw the ordinary criminal business of the country from the ordinary criminal courts of the country. And surely a Local Government may be trusted to send to this tribunal only those cases which it considers the ordinary courts are unable to deal with, either because they are choked with business or because the offences are so serious that the delays incidental to the ordinary hearing of cases would fail to check the outbreak of lawlessness. After this explanation I feel sure that the Council will agree with me that it is quite impossible to exclude these serious offences from this clause. The Government cannot accept this amendment.

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, every one of us desires that the wicked gangs to which the Hon'ble Member has referred should be got hold of as early as practicable, but obviously what is needed for that purpose is better arrangements for their speedy arrests, there is not the same need for a speedy trial, for once an evil-doer is arrested his mischievous activities are stopped. But the Act provides for a speedy trial, everything that the Hon'ble Member has said has been in support of special provisions for a speedy trial, but as I have said, once an offender is arrested a little delay in his trial can lead to no injury to the cause of public peace or safety. The Hon'ble Members says that if we take away this clause from the Bill, we shall be taking away the very power that the Local Governments most desire to be given to them. I regret I do not at all see why the Local Governments should so particularly desire to have this clause in the Bill. The Hon'ble the Home Member says that ordinary courts are not able to deal with cases like this, that these courts are choked with business and that the disposal of such cases is unduly delayed. If that is so, that is if the courts are choked with business, the remedy would appear to be to appoint additional Judges, and not the enacting of a drastic measure like the one before us. If there is no other reason and no other than what has been stated by the Hon'ble the Home Member for inserting the clause in question in the Bill, it seems to me that that object will be better served and can only be

served by the provision of a stronger and better police and not for the speedy trial which has been provided in the Bill

I hope Government will reconsider the matter and see its way to drop the clause to which, along with several other Hon'ble Members, I have drawn attention

The motion was put and the Council divided with the following result —

Ayes—7

1 The Hon'ble Mr Ghuznavi 2 The Hon'ble Pandit Bishan Narayan Dar
3 The Hon'ble Pandit M. M. Malaviya 4 The Hon'ble Sir Ibrahim
Rahimtoola 5 The Hon'ble Babu Surendra Nath Banerjee 6 The Hon'ble
Raja of Mahmudabad 7 The Hon'ble Mr M S Das

Noes—46

1 His Excellency the Commander-in-Chief 2 The Hon'ble Sir Robert
Cairley 3 The Hon'ble Sir Harcourt Butler 4 The Hon'ble Sir Ali Imam
5 The Hon'ble Mr Clark 6 The Hon'ble Sir Reginald Craddock 7 The
Hon'ble Sir William Meyer 8 The Hon'ble Mr Hailey 9 The Hon'ble
Mr Gillan 10 The Hon'ble Mr Cobb 11 The Hon'ble Mr Brunyate 12
The Hon'ble Mr Wheeler 13 The Hon'ble Mr Low 14 The Hon'ble Mr
Sharp 15 The Hon'ble Mr Porter 16 The Hon'ble Mr Kershaw 17 The
Hon'ble General Holloway 18 The Hon'ble Mr Michael 19 The Hon'ble
Surgeon General Sir C P Lukis 20 The Hon'ble Mr Russell 21 The
Hon'ble Mr Maxwell 22 The Hon'ble Major Robertson 23 The Hon'ble Mr
Kenrick 24 The Hon'ble Mr Kesteven 25 The Hon'ble Sir William
Vincent 26 The Hon'ble Mr Carr 27 The Hon'ble Sardar Khan Bahadur R
J Vakil 28 The Hon'ble Sir Fazulbhai Currimbhoy 29 The Hon'ble Mr
Donald 30 The Hon'ble Maharaja M C Nandi o' Kasimbazar 31 The
Hon'ble Raja Abu Jafar of Pimpur 32 The Hon'ble Mr Maude 33 The
Hon'ble Mr Huda 34 The Hon'ble Mr McNeill 35 The Hon'ble Rai
Bahadur Sita Nath Ray 36 The Hon'ble Lieutenant-Colonel Brooke
Blakeway 37 The Hon'ble Raja Kushalpal Singh 38 The Hon'ble Raja
Jai Chand 39 The Hon'ble Mr Maynard 40 The Hon'ble Mr Walker
41 The Hon'ble Mr Dadabhai 42 The Hon'ble Sir G M Chitnavis 43
The Hon'ble Lieutenant Colonel Gordon 44 The Hon'ble Mr Arbuthnot 45
The Hon'ble Maung Mye 46 The Hon'ble Mr Abbott

So the amendment was negatived

The Hon'ble Mr Banerjee:—My Lord, mine is the next amendment, but as it covers the same ground, I beg leave to withdraw it

The amendment was by permission withdrawn

The Hon'ble Pandit Madan Mohan Malaviya—"My Lord, I beg to move that in clause 3 (1) for 'Commissioners appointed under this Act' the following be substituted 'Special Bench constituted in accordance with the provisions of the Indian Criminal Law Amendment Act, 1908'

My Lord, the constitution of special courts is proposed in section 4 of the Bill. It is said that all trials under this Act shall be held by three Commissioners of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of one year, or are persons qualified under section 2 of the Indian High Courts Act, 1861, for appointment as Judges of a High Court or are advocates of a Chief Court or pleaders of ten years standing. The object evidently is to provide a court constituted by men with special qualifications, possessing both experience and ability, and that is right. But I submit that if instead of what is proposed in the Bill, the provisions of the

Indian Criminal Law Amendment Act for the constitution of a special Bench of the High Court will be substituted, the Court before which offences made punishable under the proposed enactment will go, will be constituted of three Judges of the High Court, who would not merely fully answer the description given in section 4 of the proposed Bill, but who would be much better qualified by experience and ability to deal with cases of exceptional character. I think, My Lord, the constitution of the Bench as I suggest will inspire a great deal more confidence and will remove much of the apprehension which may be felt otherwise over the Act.

The Hon'ble Mr Wheeler —My Lord, the acceptance of the amendment would almost imply that a large portion of this Bill is not required, since the Indian Criminal Law Amendment Act, 1908, already stands in the Statute-book and these tribunals which the Hon'ble Member seeks to introduce in this Bill can already be constituted. I think it is a matter of common knowledge that special tribunals of the Criminal Law Amendment Act, 1908, has been very sparingly used, and that when it has been used it has proved a somewhat cumbersome machinery. It would absolutely frustrate the efficient administration of the procedure contemplated by this Bill for it to be requisite to bring the parties and witnesses to the provincial headquarters to be tried by a Bench of three Judges of the High Court. There would never be enough Judges to sit upon such tribunals concurrently with the discharge of their regular duties, and the expense and trouble to the parties and the delay involved would be tremendous. Also it would be out of all proportion to the requirements of the efficient hearing of the sort of offences that will be brought before the three Commissioners to hold that they should be brought in the first instance before three Judges of Chief provincial Court. I regret, My Lord, that we cannot accept the amendment.

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, all that I would say is that the result of the amendment that I propose would be to constitute a Bench of three Judges who would be far better qualified by experience and ability to deal with exceptional cases. My friend says there are not sufficient Judges at present. Well, you have to appoint three Commissioners under the Bill, I ask that instead of appointing three Commissioners you should appoint three Judges who would fully answer the description given in the Bill. If my amendment were accepted, three Judges who are qualified to be Judges of the High Court or Chief Court would be appointed. It would mean a little extra expense, but a great deal more satisfaction from the point of view of Government and the public that justice will be done and that there should be provision against the miscarriage of justice so far as it is possible.

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, I beg to move that in section 3 (2) the words 'or in respect of persons or classes of persons accused' be omitted. As it stands an order may be passed by the Local Government regarding a whole class of persons to be tried under the Act. There is danger that injustice may in such cases be done to any particular person who may fall within that class, and there would be no difficulty in the Government issuing orders in every individual case as it may arise. If the words are omitted it will result in this, that the Government will be able to pass orders in every single case of a person or persons whom it may be considered expedient to try under the Act. I therefore propose that these words be omitted.

The Hon'ble Sir Reginald Craddock —My Lord, it is not possible to accept this amendment because it is unnecessary to require that the case of every individual man shall be reported to the Local Government before it passes orders for his trial by these tribunals. These cases are committed in various

districts, there may be large numbers of accused, and it is not a workable arrangement that in respect of every man, some of whom might be arrested at various times, special orders should be required. The wording of the section is necessarily drawn so as to enable the Local Government to pass general orders which would apply to the kind of cases for which it is contemplating this speedy trial. I cannot see how in any way any class of persons can be prejudiced because the order is given in a particular form. If for example, it was stated that all persons of a certain class committing dacoity in a certain district should be tried by the Commissioner, it certainly would not prejudice any of these individuals. It merely enables the Government to deal with a type of a case instead of dealing with every individual one when they find that the state of the district requires resort to this speedy method of bringing offenders to justice. I am, therefore, unable to accept the amendment.

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, I do not press the second amendment, *viz* that in clause 3 (2) the words "or classes of persons" be omitted, because as the first one has not been accepted this will not be. I beg leave to withdraw it.

The amendment was by permission withdrawn.

The Hon'ble Mr. Banerjee :—My Lord, I beg to withdraw the amendment which stands against my name, that is that in clause 3 (2) the words "or classes of persons" be omitted.

The amendment was by permission withdrawn.

The Hon'ble Mr. Banerjee —My Lord, I beg to move that in clause 3 (3) the words, 'but, save as aforesaid, an order under that sub-section may be made in respect of or may include any person accused of any offence referred to therein whether such offence was committed before or after the commencement of this Act,' be omitted.

My Lord, the effect of these words is to make this Act retrospective. A man commits an offence to-day two months hence, a Commission is appointed, he will be tried by that Commission, and he will thus be deprived of those rights which, at the time the offence was committed, he undoubtedly possessed. Those rights were trial according to the ordinary law and a right of appeal if he was convicted as a result of that trial. All those rights will be taken away from him although at the time when he committed that offence the Commission had not been formed. To give retrospective effect to any legislation is a very unusual proceeding, and I do hope that, in the circumstances, the Hon'ble Member in charge of the Bill will see his way to accept the amendment which I have laid before this Council.

The Hon'ble Mr. Ghaznavi —My Lord, I beg to support this amendment.

The Hon'ble Mr. Wheeler —My Lord, it might have been possible to accept this amendment had Your Excellency's Government, with great prescience, many months ago, foreseeing that circumstances might arise which would necessitate this legislation, introduced and passed it then. But as was explained by the Hon'ble Sir Reginald Craddock this morning, it has been the policy of Your Excellency's Government to maintain the administration of the country on the ordinary lines for as long as possible, with the result that this measure is being introduced after the circumstances which necessitate its introduction have actually arisen. There may be cases which have already occurred which are of the kind to which it is desired to apply the procedure of this Bill, and for that reason that clause was inserted, and it is submitted that it should stand.

The amendment was put and negatived

The question that clause 3 stand as part of the Bill was put and agreed to

The Hon'ble Sir Reginald Craddock :—I now move that clause 4 stand as part of the Bill

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord, I beg leave to withdraw the next amendment, namely —

'That from clause 4 (2) the words 'class of accused' be omitted

The amendment was by permission withdrawn

The Hon'ble Mr. Ghuznavi :—My Lord, I desire to move an amendment which stands against my name. It is this, that in clause 4 (3) the words 'at least' be omitted

The reason why I move this amendment is as follows. As far as I have been able to judge from reading this Bill and as far as I have been able to gather the intention of Government, I take it that the Government intend to create a special tribunal consisting of three Commissioners, of whom one shall always be a non-official. If therefore these two words 'at least' are allowed to remain, it will be possible in that case on some future occasion to constitute a special tribunal with three official judges or three officials. Therefore, if these two words are omitted, it will go a long way to reassure the public outside this Council as well as perhaps some of my friends within this Council who are of the opinion that I occasionally read them a lecture, although I think that my lecture is always wholesome and on this occasion it will do them good.

With these words I beg to express the hope that the Hon'ble the Home Member will except this little amendment which I have moved.

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord I beg to support this amendment. Under the High Courts Act there is a provision for the appointment of a certain number of Barrister Judges to every High Court. Parliament has considered it desirable in the interests of maintaining the best standard of justice, that this provision should be in the Act and this has been in force throughout up to this time. The tribunal proposed under the Bill is going to be a special tribunal, and it is highly desirable that there should be provision for the appointment in such a court of a lawyer who had not served either as a Sessions or Additional Sessions Judge, and who would therefore be either a person who is a barrister or a vakil practising independently in the courts. From that point of view, it is very desirable that the words 'at least' should be omitted.

The Hon'ble Sir Reginald Craddock :—My Lord, the insertion of the words 'at least' was intended to insure that two of the three persons who constituted this Court—it might be all three—but at least two should be persons who had some judicial experience, or were qualified as described in Sub-clause (3). It may not always be possible to constitute a tribunal in which all three shall be judges who answer to certain tests of service or other qualifications, and the number of judges available at any one time in a Province are not so numerous as to make it possible to constitute a number of these tribunals if all three Commissioners have to have these qualifications. The Government, therefore, considered it to be a very adequate safeguard in the constitution of these courts that at least two of these Commissioners should be qualified in this way, and therefore they are not prepared to accept

an amendment of this kind if the intention of the amendment is that all three should have these special qualifications

The amendment was put and negatived

The Hon'ble Mr Dadabhoy :—My Lord, I beg to move that, in Clause 4 (3) for the words 'one year' the words 'not less than three years' be substituted. I have very few words to say in support of this amendment, and I do hope that this amendment of mine will commend itself to the Hon'ble the Home Member who has very extensive administrative experience. I do not desire to say anything more to-day on this subject than is absolutely necessary. I am firmly of opinion that when, under this Bill, summary powers have been given to the three Commissioners, it is necessary that judges of experience should be chosen. In clause 11, the last clause of this Bill, Hon'ble Members will perceive there is a distinct provision that 'no order under this Act shall be called in question in any court, and no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act'

Hon'ble Members will therefore see what wide and extensive powers the Commissioners will have, and it is only right and proper that judicial officers of experience should be on this Commission. My Lord, I myself have been at the bar for many years, I have come in close contact with the judicial work in my own province, and I for one would not trust Additional Sessions Judges and Sessions Judges of one year's standing with this great work.

The Hon'ble Sir Reginald Craddock :—I may save time by intervening to say that the Government are prepared to accept this amendment and provide that the judges shall have these three years' experience which the Hon'ble Mr Dadabhoy desires.

The amendment was put and agreed to

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord, I beg to move that in section 4 (3) the following words be omitted,—'Of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of one year (or three years as now)'

The section will then run —

'All trials under this Act shall be held by three Commissioners qualified under section 2 of the Indian High Courts Act, 1861, for appointment as Judges of a High Court or are Advocates of a Chief Court or Pleaders of 10 years' standing'

My Lord, it is not surprising that the Hon'ble Member should have faith in members of the Service of which he is a distinguished representative than in the members of the Bar. But, My Lord, a more sound rule than the one which appeals to the Hon'ble Member prevails in England, where a large number of appointments of Judges are made from among lawyers who are practising and have practised for some time at the Bar. The result of the amendment which I propose would be to secure a much better class of lawyers as Judges on the proposed Bench. I commend the amendment to the consideration of the Government.

The Hon'ble Mr. Wheeler :—My Lord, I had hoped that after the acceptance of the Hon'ble Mr Dadabhoy's amendment, which goes far to secure the experience of the Sessions and Additional Sessions Judges who may be appointed to this tribunal, this amendment might have been withdrawn. Its effect is to further tie the hands of the Local Government, who may have to select Commissioners, to people of particular qualifications, and I think it should be judged largely on its administrative merits. The section, as it at present stands, insures the essential point that on the tribunal the trained judicial element will always preponderate. That being so, it is surely not an unreasonable measure of elasticity

to prescribe no special condition in respect of the third member. Should the cases to be heard be numerous it may not always be administratively easy to find the requisite two Commissioners of particular qualifications, and a certain amount of discretion as to the person who can most suitably be appointed as third Commissioner may well be left. With the safeguard of the necessary retention of the judicial majority, the discretionary power as regards the third member can really give little cause for complaint.

The amendment was put and negatived

The question that clause 4 as amended stand as part of the Bill was then put and agreed to

The Hon'ble Sir Reginald Craddock :—I now move that clause 5 stand as part of the Bill

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord, I beg to move that from the proviso to clause 5 the following words be omitted, *viz.*, 'shall make a memorandum only of the substance of the evidence of each witness examined, and ' The result of which will be that the proviso will stand thus —

'Provided that such Commissioners shall not be bound to adjourn any trial for any purpose unless such adjournment is, in their opinion, necessary in the interests of justice'

My Lord, under section 9 a special rule of evidence is provided. That rule of evidence is very much what we find in the Indian Criminal Law Amendment Act, section 13. The Legislature thought fit in passing the Indian Criminal Law Amendment Act to lay down that 'notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced, and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused'. This has been practically reproduced in section 9 of the Bill before us. But the Bill goes far beyond this in the proviso to section 5. To lay down that the Commissioners shall make only a memorandum of the substance of the evidence of each witness, is I submit, unnecessary and dangerous. The Commissioners may hear a case, and if they take down only the substance of the statements of witness, they may, when they come to read the evidence as a whole, miss some point which may lead to grave injustice. I think, as no appeal is provided for, as the judgments of the Commissioners are to be final and conclusive, it is desirable that the evidence should be recorded in full as it is required to be recorded under the Criminal Procedure Code.

The Hon'ble Sir Reginald Craddock :—My Lord, the procedure provided under section 5 is intended to facilitate a speedy trial, which is the object of this legislation. The detailed record of evidence that is taken down in our courts is taken down in full in order that the appellate court may have the means of judging the facts upon that record. When, however, no appeals are allowed from the decision of the court, it is clear that a very long and detailed statement of evidence is not necessary. It has to be judged in this case by the people who hear the evidence and who have to judge on a written record. Therefore, to provide that the Commissioners should have the whole of the evidence taken down in detail, would be to interfere considerably with the object of the trial, which is to be a speedy one. No doubt, in practice, the Commissioners would record such evidence as they thought proper in order to assist their judgment in the case. But it is in accordance with the whole object of this legislation to give them the option of making a memorandum only of the substance of the evidence, and I think the discretion as to the exact amount the Commissioners should take down in writing may well be left to them.

I am unable, therefore, on behalf of the Government, to accept this amendment

The amendment was put and negatived

The Hon'ble Mr Dadabhojy :—My Lord, I beg to move that in clause 5 (2) after the word 'prevail' the following words be added 'But in no case of difference of opinion shall a sentence of death be passed'

My Lord, the amendment which I now press upon the attention of the Council is not purely a sentimental one. It is founded on the traditions of British justice, it is based on the wide principles of British justice, it goes to the root, I say, of British justice. In this case summary powers are given to these Commissioners, they will have powers of life and death, the inquiry which they have to make will be of an extremely summary nature and character, they will not be bound to observe fully the rules of evidence which the Evidence Act imposes in ordinary procedure. Even under clause 9 of the Bill very extensive powers have been given to use the statement of a person who is dead or, whose disappearance or incapacity to give evidence has, in the opinion of the Commissioners, been caused in the interests of the accused. My Lord, I am perfectly aware that under the Crimes Act the Special Tribunal enjoys a similar privilege, that is, in case of a difference of opinion the judgment of the majority of the judges prevails, even when a sentence of death is passed.

But, My Lord, you can hardly compare the experience, the profound legal knowledge of High Court Judges with those of the Commissioners that will be appointed, and I therefore contend that it will be not quite safe for people going up for their trial before these tribunals that in the case of a difference of opinion the maximum penalty of the law should be pronounced.

My Lord, the object of this legislation is doubtless a deterrent one, but will its deterrent effect be taken away if, instead of the maximum penalty of the law, a sentence of penal servitude for life is substituted? My Lord, we are all desirous of co-operating with Government in passing this emergent piece of legislation. We have all shown this morning how anxious we are to help Government in this crisis, in this hour of the Empire's need. But, My Lord, at the same time, I do think that justice should be combined with clemency, and where there is a difference of opinion between the Judges as regards the guilt of an offender, it is in consonance with the principles of British justice, it is in consonance with the ideas of all Englishmen, that the benefit of the doubt in that case should be given to the accused, and the maximum penalty of the law should not be pronounced.

With these words, my Lord, I request that clause 5 (2) be amended in the way I suggest, which can be done without detriment to the provisions of this Act.

The Hon'ble Mr. Das :—My Lord, I support the amendment.

The Hon'ble Sir Ibrahim Rahimtulla :—My Lord, I should also like to support the amendment. When the proceedings under this Act are going to be largely of a summary character, I think it is very desirable that the extreme penalty of the law should not be allowed whenever there is a difference of opinion among the judicial officers charged with the trial of these cases. I trust that the appeal which we are making to Your Excellency will be accepted and that the extreme penalty of the law will not be awarded in cases in which the Commissioners appointed under this emergency legislation are divided as to the guilt of the accused.

The Hon'ble Sir Cangaadhar Chitnavis —My Lord, I support the amendment

The Hon'ble Sir Farulbhoy Currimbhoy.—I fully endorse the views expressed by the Hon'ble Mover and the other Members, and I support the amendment

The Hon'ble Mr Damerjee —My Lord, I have given notice of the same amendment and I thoroughly associate myself with the observations made by the Hon'ble Mover. Here is a man tried under a summary procedure, and there is no appeal for him against the sentence of the Commissioners, and when there is a difference of opinion there is always an element of doubt introduced as to the soundness of a conviction. Under these circumstances, it seems to me to be hard—almost unfair—to pass the extreme penalty of the law upon a man thus situated. I hope, therefore, that the Hon'ble Member in charge of the Bill will see his way to accept this amendment

The Hon'ble Maudat Madan Mohan Malaviya —My Lord, I have given notice of a similar amendment, and I beg to support the amendment before us. My Lord, if the amendment is accepted the result will be that where out of three judges one would be in doubt as to whether the accused was guilty or not, in that case the accused will have, and he should have the benefit of the doubt. That is a principle of English law for which Englishmen have justly claimed great credit. We admire the system of English justice because of that principle. I fear, My Lord, that if the section 5 (2) of the Bill stands as it does in the Bill, there will be a very great departure from the aforesaid established principle for which there is no justification. I hope the Government will see their way to accepting the amendment

The Hon'ble Mr Ghuznavi —My Lord, I desire to endorse every word which has been uttered by my friend Mr Dadabhoy with regard to his amendment. Justice should always be tempered with mercy in a case of this kind and I hope that that Government will see their way to accepting the amendment

The Hon'ble Sir Reginald Craddock —My Lord, this amendment has received a certain amount of support from several Hon'ble Members of this Council, and I should like to view it sympathetically, but I think there is to some extent a confusion of ideas in this matter. The clause provides that, in the event of any difference of opinion between Commissioners, the opinion of the majority should prevail. That difference might be in respect of conviction, but the amendment bears no relation whatever to the question of conviction. No doubt it is possible that in some cases one member of the Court might wish to give the benefit of the doubt to the accused person, and the majority of the Court (i.e., the other two members) might find him guilty. It would be entirely contrary to all the principles on which all tribunals are constituted that the opinion of the minority should decide as to whether the man is guilty or not. Nor does the amendment moved by the Hon'ble Mr Dadabhoy actually amount to that, although the arguments that he put forward would appear to suggest that that is what he really contemplates. In effect, what the amendment really proposes is that, in the event of a difference of opinion, whether it be of sentence or of conviction, no sentence of death should be passed. Well, there would possibly be some case for that if you took a hasty opinion on it. At first sight it might seem a reasonable proposition. As a matter of fact, under our existing law, a Sessions Judge may sometimes refrain from passing a sentence of death, and it may be enhanced to a sentence of death by a High Court. So that our existing law recognises that there may be a difference

of opinion about a sentence in which the opinion in favour of a sentence of death shall prevail. Now, in this particular case, what may often happen may be that there may be a conviction for murder, perhaps of an aggravated kind, and the majority of the tribunal may consider that the capital sentence is the only one which will meet the case. One of the Judges may think that the case might be met by the sentence of transportation. In that case of course the opinion of the two must, in accordance with all precedent, prevail. But there is a very considerable safeguard in such cases, and in respect of that I would draw the attention of the Council to sub-clause (2) of clause 8, where it is made quite clear that the power of the Governor-General in Council or the Local Government to make orders under section 401 or 402 of the Code of Criminal Procedure will remain unimpaired by the Bill. Clearly, then, in such a case the accused person who has been sentenced to death would have a strong point in his favour in a memorial to the Local Government and then to the Governor-General in Council, that one of the members of the Court had not been in favour of inflicting the death sentence, and the fact that this third Judge had been in favour of the more lenient course would be on record and would receive due weight from the Local Government and from the Governor-General in Council. We consider, my Lord, that the safeguards are ample to ensure that a man for whom the capital sentence might be considered to be extra severe should have ample opportunity of having considerations in his favour given weight to by the executive authority, and that the existence of this safeguard renders it unnecessary to depart from all precedent in the case of these tribunals in such a way as to prescribe that the opinion of the minority shall prevail over the opinion of the majority.

I hope, My Lord, that the Council will rest satisfied with this explanation of the case, and will feel reassured that it is improbable that extra severity will ever be exercised in the case of persons convicted of crimes by this procedure.

The Hon'ble Mr. Dadabhai—My Lord, I have heard with great interest what the Hon'ble the Home Member had to say in reply to my amendment, but, with great respect for his opinion, I beg to say that the Hon'ble the Home Member is under some misapprehension as regards the interpretation of sub-clause (2). In that clause a difference of opinion is provided for both as regards the finding of the Court and the sentence to be passed by it. I am not at present questioning the finding of the Commissioners. In the matter of sentence only my amendment will apply. Clause 8 (2), no doubt, gives powers to the Local Government to interfere in this matter, but my Hon'ble friend has probably not noticed that this inquiry will be of a very summary nature. The evidence that will be recorded will be brief, and the provisions of the Evidence Act and the Criminal Procedure Code will not be rigidly followed. Will the Local Government be in a position to form, on such an imperfect record, their decisive opinion on the case? Who will be the best judges, the Commissioners who heard the case, who heard the evidence and who recorded brief notes of the evidence, but who also had the opportunity of marking the demeanour of the witnesses, or the Local Government which has before it an imperfect record of the case? I submit, therefore, that the objection that has been raised to my amendment is neither valid nor convincing. I appeal to this Council, to the Hon'ble Members, in the name of justice, in the name of humanity, to accept my amendment. As you are all aware it is a cardinal principle of British justice that a hundred guilty persons may go off scot free rather than one innocent man should be hanged, and I therefore ask you to give your support to this most reasonable amendment. My Lord, I now request you to put my amendment to the vote.

The amendment was put and the Council divided with the following result.—

Ayes—16

- 1 The Hon'ble Mr. Ghaznavi 2 The Hon'ble Pandit Bishan Narayan Dar,
3. The Hon'ble Pandit M. M. Malaviya 4 The Hon'ble Mr. R. R. Venkataanga.

5 The Hon'ble Sir Ibrahim Rahimtoola. 6 The Hon'ble Sir Fazalbhoy Currimbhoy. 7 The Hon'ble Mr Surendra Nath Banerjee 8 The Hon'ble Maharaja M C Nandi of Kasimbazar, 9 The Hon'ble Raja of Mahmudabad, 10 The Hon'ble Raja Abu Jafar of Pirpur 11 The Hon'ble Mr M, S Das. 12 The Hon'ble Mr Huda 13 The Hon'ble Raja Kushalpal Singh 14, The Hon'ble Raja Jai Chand 15, The Hon'ble Mr. Dadabhoy. 16 The Hon'ble Sir Gangadhar Chitnavis.

Noes—36

1 His Excellency the Commander-in-Chief 2 The Hon'ble Sir Robert Carlyle. 3 The Hon'ble Sir Harcourt Butler, 4 The Hon'ble Sir Ali Imam. 5. The Hon'ble Mr. Clark. 6. The Hon'ble Sir Reginald Craddock, 7 The Hon'ble Sir William Meyer 8 The Hon'ble Mr Hailey 9 The Hon'ble Mr Gillan 10. The Hon'ble Mr Cobb 11 The Hon'ble Mr Brunyate. 12 The Hon'ble Mr Wheeler 13 The Hon'ble Mr. Low. 14 The Hon'ble Mr Sharp. 15 The Hon'ble Mr Porter 16 The Hon'ble Mr Kershaw 17 The Hon'ble Mr Michael 18 The Hon'ble General Holloway. 19 The Hon'ble Surgeon-General Sir C P Lukis. 20. The Hon'ble Mr. Russell 21. The Hon'ble Mr Maxwell 22 The Hon'ble Major Robertson 23. The Hon'ble Mr Kenrick. 24. The Hon'ble Mr Kesteven 25 The Hon'ble Sir William Vincent 26 The Hon'ble Mr Carr 27 The Hon'ble Mr Donald 28. The Hon'ble Mr Maude. 29 The Hon'ble Mr. McNeill 30 The Hon'ble Lt-Col, Brooke Blakeway, 31. The Hon'ble Mr, Maynard. 32. The Hon'ble Mr Walker 33 The Hon'ble Lt.-Col, Gardon 34. The Hon'ble Mr. Arbuthnot. 35. The Hon'ble Maung Mye. 36. The Hon'ble Mr Abbott.

So the amendment was negatived.

The Hon'ble Mr Banerjee :—My Lord, I beg to withdraw the amendment as regards this particular section, namely :—

‘That to clause 5 (2) the following words be added, namely —‘but in such a case sentence of death shall not be passed.’

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord, I beg to withdraw my proposed amendment to this section, namely, that to clause 5 (2) the following words be added, namely. —‘But no sentence of death shall in such a case be passed’

The amendment was by permission withdrawn.

The motion that clause 5 stand as part of the Bill was then put and agreed to.

The Hon'ble Sir Reginald Craddock :—My Lord, I now move that clause 6 stand as it is in the Bill.

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord, I beg to withdraw the amendment, of which I have given notice, *viz*, that the words ‘and conclusive’ be omitted.

The amendment was by permission withdrawn.

The Hon'ble Mr. Banerjee :—My Lord, I beg to withdraw the amendment as to clause 6 that stands against my name.

The amendment was by permission withdrawn.

The Hon'ble Mr Madan Mohan Malaviya :—My Lord, I beg to move that the last two lines of clause 6 (2) be omitted, *viz*, —

‘And no order of confirmation shall be necessary in the case of any sentence passed by them’

The Hon'ble Sir Reginald Cradock :—My Lord, the last two lines of clause 6 (1) that the Hon'ble Mr. Malaviya wishes omitted are 'no order of confirmation shall be necessary in the case of any sentence passed by them' My Lord, if this amendment were accepted it would have the practical result of giving a power of appeal, because if the sentence is subject to confirmation it is practically impossible for the question of the guilt or innocence of a man to be left out of consideration. The Sessions Judge can ordinarily pass all sentences except the sentence of death without confirmation and the Bill provides that in lieu of the sentence of confirmation which is now required you have a Court of three Judges to decide a man's guilt or innocence and the propriety of the sentence. The introduction of a confirmation procedure would therefore strike at the root of the speedy trial procedure which the Bill is intended to provide, and therefore it cannot be accepted by Government.

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord, after all that the Hon'ble the Home Member has said it yet seems to me that there would not be much loss of time caused by the adoption of the amendment proposed. The accused would have been convicted by the Special Commissioners and if the extreme sentence is carried out after fifteen days there would not be any loss to the cause of justice. In the case of a death sentence the accused ought to be given an opportunity of having his case revised by the High Court because it may sometimes prevent a grave injustice. This, as I mentioned before, is what happened in the case of the German Consul at Sunderland, in which the Privy Council upset the decision of the High Court of England who had convicted and sentenced him to death. Cases of a similar miscarriage of justice ought to be provided against. Nothing would be lost by providing for them in this Bill.

The motion was put and negatived

The Hon'ble Pandit Madan Mohan Malaviya :—My Lord, I move that clause 6, sub-clause (2), which runs as follows, be omitted —

"6 (2) If in any trial under this Act it is proved that the accused person has committed any offence whether referred to in section 3, or in any order under that section or not the Commissioners may convict such accused person of such offence and pass any sentence authorised by law for the punishment thereof."

Now, my Lord, this Act purports to provide for the trial of certain offences to which a special significance attaches by reason of the extraordinary circumstances of the war. But by virtue of this provision every offence of an ordinary nature, which may be triable otherwise by the ordinary courts of justice is brought under the purview of this Act. Suppose a person has been tried for one of the offences referred to in section 3 and an order is made sentencing him to 5 years' imprisonment, and suppose that there is another offence of an ordinary kind of which he has been guilty. If he is tried for this offence in the ordinary courts, he will have the advantage of an opportunity of defending himself according to the ordinary regular procedure which the law has provided, but if the Special Commissioners are empowered to convict such an accused person of such an offence not falling under the purview of this special measure, then the man is unjustly deprived of the right of being tried for ordinary offences by the ordinary courts of law, which the Hon'ble Member has told us this Act does not purport to take away. My Lord, I submit that this clause should not find a place in the Bill, and should be omitted.

The Hon'ble Mr. Wheeler :—My Lord, the sub-clause merely provides for a point of procedure which may arise and enables it to be dealt without prejudice to anybody. It frequently happens that accused persons are sent before Courts on certain charges, after hearing the evidence and weighing the whole matter the Court considers that an offence, other than that charged, has been committed and convicts of that. If the clause were omitted, and if the

Commissioners were able only to convict a person of one of the specific offences mentioned in the Bill, then if they are of opinion that the offence actually committed is not specifically covered by the Bill, the whole proceedings would presumably have to be reopened, it may be before a Magistrate, and the accused instead of having had one trial before three Commissioners of whom two must have had considerable judicial experience, would have to be re-tried by a single Magistrate. That would surely neither help the man nor benefit the cause of justice. I submit, My Lord, that the clause is reasonable.

The amendment was put and negatived.

The motion that clause 6 stand as part of the Bill was then put and agreed to.

The Honble Sir Reginald Craddock —My Lord, I now move that clause 7 stand as part of the Bill.

The motion was put and agreed to.

The Honble Sir Reginald Craddock.—My Lord I move that clause 8 stand as part of the Bill

The Hon'ble Mr. Banerjee.—My Lord, I beg to move the following amendment, that in clause 8 (2) for the words 'and no Court' the words 'the High Court alone' be substituted. The effect of that would be to give a right of appeal to the High Court in the case of the conviction of an individual. The section takes away the right of appeal. Under my amendment it is proposed that the right of appeal should be given. My Lord, the sentence in many cases would be so heavy and the procedure so summary that it seems to me as a matter of justice that there ought to be some authority to which an appeal might be preferred. The High Court is the highest authority and, having regard to this consideration, the summary nature of the procedure, and also to the absence of the safeguards which are provided by the ordinary law, I submit that it is only fair to the convicted person that he should have the right of appeal and that that right of appeal, I recommend, should be exercised by the High Court.

The Honble Sir Reginald Craddock.—My Lord, the amendment moved by the Hon'ble Mr. Banerjee is to substitute the words 'the High Court alone' for the words 'and no Court'. He argued that it was necessary to give the right of appeal to the convicted persons in such cases, although, as a matter of fact, his amendment would not have that effect at all. It would give certain powers of revision to the High Court, and that is all. Well, My Lord, in introducing the Bill and explaining the necessity for a speedier method of administering justice, I dwelt strongly upon the necessity that there was that punishment should follow quickly on the crime, and that all the proceedings which are allowed in ordinary times to pursue their leisurely course, should be quickened up. Therefore to give powers of revision to the High Court in cases of this kind, or powers of appeal as the Hon'ble Member wanted, though his amendment did not convey that, would be merely to once more introduce the same kind of delay which by this legislation it is sought to avoid. I cannot imagine anyone who has voted for the principle of the Bill supporting this amendment. If the principle of this Bill is accepted, then the amendment cannot possibly be accepted.

The amendment was put and negatived.

The motion that clause 8 stand as part of the Bill was put and agreed to.

The Hon'ble Sir Reginald Craddock —My Lord, I now move that clause 9 should stand as part of the Bill.

The motion was put and agreed to.

The Hon'ble Sir Reginald Craddock —My Lord, I move that clause 10 should stand as part of the Bill

The Hon'ble Mr Banerjee —My Lord, I beg to withdraw the amendment to clause 10 (1) stands against my name

The amendment was by permission withdrawn

The Hon'ble Pandit Madan Mohan Malaviya —My Lord, I also beg for leave to withdraw my two amendments to clause 10 (12)

Both amendments were by permission withdrawn

The motion that clause 10 should stand as part of the Bill was then put and agreed to

The Hon'ble Sir Reginald Craddock —My Lord, I now move that clause 11 should stand as part of the Bill

The motion was put and agreed to

The Hon'ble Sir Reginald Craddock —My Lord, I now move that the Bill be passed. It has been a source of satisfaction to the Government to find how hearty has been the support accorded by the Council to this measure. There have been points in it upon which amendments have been suggested, and in one or two cases we were able to accept those amendments. There were others in which I should have been glad to agree to some of the amendments had it been possible to do so without interfering with the efficiency of the new law. I think it is most gratifying to find how heartily and how loyally—although the task is never a pleasant one—the Hon'ble Members have come to the help of Government in this matter.

My Lord, in the course of the debate remarks have now and then been dropped which would indicate that some members have rather over-estimated the character of the trial before these tribunals as being of a very summary nature, and I should like to repeat and lay some stress upon it that the law of evidence in this case is not altered except in one particular, for which we have a precedent in the Act of 1908, namely, that when a witness has clearly been got rid of in order to avoid his giving evidence, then, any statement of his recorded before a Magistrate may be put in as evidence. With that one exception which, as I have said has a precedent, the law of evidence will continue to guide these Special Commissioners in the trial of cases, and although the powers given are drastic, yet, as most Hon'ble Members will, I think, readily admit, this criticism has been levelled against many measures that have been brought before our Councils, and in nearly every case—perhaps in every case—many of the fears expressed at the time have been found to have been groundless. In the administration of an Act of this kind they may rest assured that under Your Excellency's direction the action taken will be not more stringent than the necessities of the case warrant and I think that Local Governments may be fully trusted not in any way to abuse this power of handing cases over to special tribunals. With these remarks, My Lord, I ask that the Bill be passed.

The motion was put and agreed to

The Council adjourned to Monday, the 22nd March, 1915

DELHI

The 26th March, 1915.

W. H. VINCENT,

Secretary to the Government of India,
Legislative Department.

Received the assent of the Governor-General on the 19th March
1915

ACT IV OF 1915.

An Act to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences.

Whereas owing to the existing state of war it is expedient to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences, it is hereby enacted as follows —

Short title, extent and duration 1 (1) This Act may be called the Defence of India (Criminal Law Amendment) Act, 1915.

(2) It extends to the whole of British India including British Baluchistan, the Santhal Parganas and the district of Angul.

(3) This section and section 2 shall come into operation at once. The Governor-General in Council may, by notification in the Gazette of India, direct that the rest of the Act shall come into operation in any province or part thereof on such date as may be specified in such notification.

(4) This Act shall be in force during the continuance of the present war and for a period of six months thereafter

Provided that the expiration of this Act shall not affect the validity of anything done in pursuance of it and any person convicted under this Act may be punished as if it had continued in force, and all prosecutions and other legal proceedings pending under this Act at the time of the expiration thereof may be completed and carried into effect, and the sentences carried into execution as if this Act had not expired.

2 (1) The Governor-General in Council may make rules for the purpose of securing the public safety and the defence of British India and as to the powers and duties of public servants and other persons in furtherance of that purpose

In particular and without prejudice to the generality of the foregoing power, rules under this section may be made—

(a) to prevent persons communicating with the enemy or obtaining information which may be used for that purpose,

(b) to secure the safety of His Majesty's forces and ships and prevent the prosecution of any purpose likely to jeopardise the success of the operations of His Majesty's forces or the forces or His Allies or to assist the enemy,

(c) to prevent the spread of false reports or reports likely to cause disaffection or alarm or to prejudice His Majesty's relations with Foreign Powers or to promote feelings of enmity and hatred between different classes of His Majesty's subjects,

(d) to empower any civil or military authority to issue such orders and take such measures as may be necessary to secure the safety of railways, ports, dockyards, telegraphs, post offices, works for the supply of

gas, electric light or water, sources of water-supply, all means of communication and any areas which may be notified by such civil and military authority, as areas which it is necessary to safeguard in the public interest,

(e) to enable any naval or military authority to take possession of any property, moveable or immovable, for naval or military purposes and to issue such orders and do such acts in respect of any property as may be necessary to secure the public safety or the defence of British India or any part thereof;

(f) to empower any civil or military authority where, in the opinion of such authority, there are reasonable grounds for suspecting that any person has acted, is acting or is about to act in a manner prejudicial to the public safety, to direct that such person shall not enter, reside or remain in any area specified in writing by such authority, or that such person shall reside and remain in any area so specified, or that he shall conduct himself in such manner or abstain from such acts, or take such order with any property in his possession or under his control, as such authority may direct,

(g) to prohibit or regulate the possession of explosives, inflammable substances, arms and all other munitions of war;

(h) to prohibit anything likely to prejudice the training or discipline of His Majesty's forces and to prevent any attempt to tamper with the loyalty of persons in the service of His Majesty or to dissuade persons from entering the military or police service of His Majesty,

(i) to empower any civil or military authority to enter and search any place if such authority has reason to believe that such place is being used for any purpose prejudicial to the public safety or to the defence of British India and to seize anything found there which he has reason to believe is being used for any such purpose;

(j) to provide for the arrest of persons contravening or reasonably suspected of contravening any rule made under this section and prescribing the duties of public servants and other persons in regard to such arrests,

(k) to prescribe the duties of public servants and other persons as to preventing any contravention of rules made under this section and to prohibit any attempt to screen persons contravening any such rule from punishment, and

(l) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered

(2) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, or if the intention of the person so contravening any such rule or order is to assist the King's enemies or to wage war against the King, may provide that such contravention shall be punishable with death, transportation for life or imprisonment for a term which may extend to ten years, to any of which punishments fine may be added.

(3) All rules made under this section shall be published in the Gazette of India and shall thereupon have effect as if enacted in this Act

3 (1) The Local-Government may by order in writing direct that any person accused anything which is an offence in virtue of any rule made under section 2, or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, or of criminal conspiracy to commit, or of abetting, or of attempting to commit or abet any such offence shall be tried by Commissioners appointed under this Act

(2) Orders under sub-section (1) may be made in respect of all persons accused of any offence referred to in that sub-section, or in respect of any class of person so accused, or in respect of persons or classes of persons accused of any particular offence therein referred to or accused of any class of such offences

(3) No order under sub section (1) shall be made in respect of or be deemed to include any person who has been committed under the Code of Criminal Procedure, 1898, for trial before a High Court, or in whose case an order for trial has been made under section 6 of the Indian Criminal Law Amendment Act, 1908, but, save as aforesaid, an order under that sub-section may be made in respect of or may include any person accused of any offence referred to therein whether such offence was committed before or after the commencement of this Act

4 (1) Commissioners for the trial of persons under this Act shall be appointed by the Local Government.

(2) Such Commissioners may be appointed for the whole province or any part thereof or for the trial of any particular accused person or class of accused persons

(3) All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of not less than three years, or are persons qualified under section 2 of the Indian High Courts Act, 1861, for appointment as Judges of a High Court or are advocates of a Chief Court or pleaders of ten years standing

5 (1) Commissioners appointed under this Act, may take cognizance of offences without the accused being committed to them for trial, and, in trying accused persons shall, subject to any rules made by the Local Government in this behalf, follow the Procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by magistrates

Procedure of Commissioners. Provided that such Commissioners shall make a memorandum only of the substance of the evidence of each witness examined, and shall not be bound to adjourn any trial for any purpose unless such adjournment is in their opinion necessary in the interests of justice

(2) In the event of any difference of opinion between the Commissioners the opinion of the majority shall prevail

6. (1) The judgment of Commissioners appointed under the Act shall be final and conclusive and such Commissioners may pass upon any person convicted by them any sentence authorised by law for the punishment of the offence of which such person is convicted and no order of confirmation shall be necessary in the case of any sentence passed by them

(2) If in any trial under this Act it is proved that the accused person has committed any offence whether referred to in section 3 or in any order under that section or not, the Commissioners may convict such accused person of such offence and pass any sentence authorised by law for the punishment thereof

7 The provisions of the Code of Criminal Procedure, 1898, so far as they are inconsistent with the special procedure prescribed by or under this Act, shall not apply to the proceedings of Commissioners appointed under this Act, but save as otherwise provided, that Code shall apply to such proceedings and the Commissioners shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction

8 (1) Notwithstanding the provisions of the Code of Criminal Procedure, 1898, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of Commissioners appointed under this Act, and no Court shall have authority to revise any such order or sentence, or to transfer any case from such Commissioners, or to make any order under section 491 of the Code of Criminal Procedure, 1898, or have any jurisdiction of any kind in respect of any proceedings under this Act

(2) Nothing in sub-section (1) shall be deemed to affect the power of the Governor-General in Council or the Local Government to make orders under section 401 or 402 of the Code of Criminal Procedure, 1898, in respect of persons sentenced by Commissioners under this Act

9. Notwithstanding anything contained in the Indian Evidence Act, 1872, where the statement of any person has been recorded by a magistrate, such statement may be admitted in evidence in any trial before Commissioners appointed under this Act if such person is dead or cannot be found or is incapable of giving evidence, and the Commissioners are of opinion that such death, disappearance or incapacity has been caused in the interest of the accused.

10 The Local Government may, by notification in the local official Gazette, make rules providing for—

(a) the times and places at which Commissioners appointed under this Act may sit,

(b) The procedure of such Commissioners including the appointment and powers of their President, and the procedure to be adopted in the event of any Commissioner being prevented from attending throughout the trial of any accused person,

LAW RELATING TO PRESS AND SEDITION.

**Revised pages to be substituted for pages
121 to 129.**

DEFENCE OF INDIA (CRIMINAL LAW AMENDMENT) ACT, 1915 121

(iii) the manner in which prosecutions before such Commissioners shall be conducted, and the appointment and powers of persons conducting such prosecution,

(iv) the execution of sentences passed by such Commissioners;

(v) the temporary custody or release on bail of persons referred to or included in any order made under sub-section (1) of section 3, and for the transmission of records to the Commissioners, and

(vi) any matter which appears to the Local Government to be necessary for carrying into effect the provisions of the Act relating or ancillary to trials before Commissioners

11. No order under this Act shall be called in question in any court and no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act

Savings

Statement of Objects and Reasons

The existence of a state of war in which His Majesty's Government is engaged has, as in England, demonstrated the necessity of arming the executive with certain special temporary emergency powers requisite to secure the public safety and the defence of British India

Further since the commencement of the war there have been outbreaks of lawlessness in certain areas, the prompt punishment of which is essential in the interests of the public security

The present Bill confers powers on the Governor-General in Council to make rules to meet the first object in view while in those areas to which the special provisions may be extended, it provides for the creation of special tribunals for the more speedy trial of certain classes of offences which may be made over to them

The Act will be only in force during the continuance of the present war and for a period of six months thereafter

*These pages have been reprinted in consequence of the (Consolidation) Rules, as amended by subsequent notifications

AN ORDINANCE TO EXTEND THE POWERS CONFERRED BY THE DEFENCE OF
122 INDIA (CRIMINAL LAW AMENDMENT) ACT, 1915, No. III of 1915.

Published with Notification, dated, the 10th November, 1915

Short title and extent 1 (1) This Ordinance may be called the Defence
of India Ordinance, 1915

(2) It extends to the whole of British India, including British Baluchistan the Sonthal Parganas and the district of Angul

2 Section 2 of the Defence of India (Criminal Law Amendment)
Extension of powers con- Act, 1915, shall be construed as if after clause
tained in section 2 of Act (1)* of sub-section (1), the following clauses
IV of 1915 were inserted, namely —

“(m) to require that there shall be placed, at the disposal of the Governor-General in Council, the whole or any part of the output of any factory, workshop, mine or other industrial concern for the manufacture, preparation or extraction of any article or thing which, in his opinion, can be utilised in the prosecution of the present war,

(n) to take possession of, and use for the purpose of the Governor General in Council, any such factory, workshop, mine or industrial concern or any appurtenances or plant thereof,

(o) to require any work in any such factory, workshop, mine or industrial concern to be done in accordance with the directions of the Governor General,

(p) to regulate or restrict the carrying out of work in any such factory, workshop, mine or industrial concern, or to remove the plant therefrom with the object of increasing the output of any other such factory, workshop, mine or industrial concern;

(q) to provide for any other action which may be necessary to regulate the possession, or to facilitate the collection, manufacture, preparation or extraction of any article or thing, which can, in the opinion of the Governor General in Council, be utilised in the prosecution of the present war, and,

(r) to regulate the sailings of British steamers from any port in British India, and to reserve, for the use of the Governor General in Council, all or any accommodation of whatever kind for the carriage of persons, animals or goods on any such steamers.”

The 9th December 1915

No 86 —In pursuance of section 2 of the Defence of India (Criminal Law Amendment) Act, 1915 (IV of 1915), read with the Defence of India Ordinance, 1915 (III of 1915) the Governor General in Council is pleased to make the following rules —

Short title 1. These rules may be called the Defence
of India (Consolidation) Rules, 1915

Definitions 2 In these rules unless there is anything repugnant in the subject or context.—

(i) " The Act " means the Defence of India (Criminal Law Amendment) Act, 1915

(ii) " Competent Military authority " means the Commander-in-Chief in India, the General Officer Commanding an Army, a Division, a Divisional Area, a Brigade, or any British Commissioned Officer in independent command of a corps or detachment of His Majesty's Forces

(iii) " Defended harbour " means any area declared by a notification in this behalf of the Governor General in Council in the Gazette of India to be a defended harbour for the purpose of these rules

3 Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has acted, is acting, or is about to act in a manner prejudicial to the public safety, or the defence of British India, the Local Government may, by order in writing, direct that such person—

(a) shall not enter, reside or remain in any area specified in the order ,

(b) shall reside or remain in any area in British India so specified ,

(c) shall conduct himself in such manner or abstain from such acts or take such order with any property in his possession or under his control as may be specified in such order

Provided that a Local Government shall not make an order under clause (b) of this rule specifying an area outside the Province without the previous sanction of the Governor General in Council

4 An order made under rule 3 shall be served on the person in respect of whom it is made in the manner provided in the Code of Criminal Procedure, 1898, for service of a summons, and upon such service such person, shall be deemed to have had due notice thereof

5 Whoever being a person in respect of whom an order has been made under rule 3 knowingly disobeys any direction in such order shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine

6 (1) Every person in respect of whom an order has been made under rule 3 shall, if so directed by any officer authorised in this behalf by general or special order of the Local Government —

Power of photographing, etc., persons against whom orders under rule 3 have been made

(a) permit himself to be photographed ,

(b) allow his finger impressions to be taken ,

(c) furnish such officer with specimens of his handwriting and signature ;

(d) attend at such times and places as such officer may direct for all or any of the foregoing purposes

(2) If any person fails to comply with, or attempts to evade, any direction given in accordance with the provisions of this rule, he shall be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs 1,000, or with both

7 The power to issue search-warrants conferred by section 98 of the Code of Criminal Procedure, 1898, shall be deemed to include a power to issue warrants authorising the search of any place in which any Magistrate, mentioned in that section, has reason to believe that an offence under the foregoing rules or any offence prejudicial to the public safety or the defence of British India has been, is being, or is about to be committed, and the seizure of anything found therein or thereon which the officer executing the warrant has reason to believe is being used or intended to be used for any such purpose as aforesaid, and the provisions of the said Code so far as they can be made applicable shall apply to searches made under the authority of any warrant issued under this rule and to the disposal of any property seized in any such search

8 (1) In any area in which the Governor General in Council may, by notification in the Gazette of India, declare that the provisions of this rule shall be in force, it shall be lawful for the competent military authority and any person duly authorised by him by order in writing where, for the purpose of securing the public safety or the defence of British India, it is necessary so to do —

- (a) to take possession of any land and to construct military works, including roads, thereon, and to remove any trees, hedges, and defences therefrom,
- (b) to take possession of any buildings or other property, whether moveable or immovable, including works from the supply of gas, electricity, or water, and of any sources of water-supply,
- (c) to take such steps as may be necessary for placing any buildings or structures in a state of defence,
- (d) to cause any buildings or structures to be destroyed or any property of any kind to be moved from one place to another, or to be destroyed, and
- (e) to do any other act involving interference with private rights of property which is necessary for the purpose aforesaid.

(2) The Chief Presidency Magistrate in a Presidency-town and the District Magistrate elsewhere may, on the application of any person who has suffered loss by the exercise of the power conferred by sub-rule (1), award to such person such compensation as he thinks reasonable, and such award shall be final

9 The competent military authority and any person authorised by him by order in writing shall have right of access to any land or buildings, or other property whatsoever, and may also by order provide for the temporary suspension of rights of way over such land buildings or other property

10 The competent military authority may, by order if he considers it necessary so to do for the purposes of any military operation or work of defence or other defended military work, or of any work for which it is deemed necessary for the purposes of the Act to afford military protection, close or divert any road or pathway over or adjoining the land on which such work is situate for so long as the order remains in force,

Provided that, where any such road or path way is so closed or diverted, the competent military authority shall—

- (1) give notice in writing to the public or local authority (if any) in whose charge such road or pathway is,
- (2) publish notice thereof in such manner as he may consider best adapted for informing the public, and, where any road or pathway is stopped up by means of any physical obstruction, cause lights sufficient for the warning of passengers to be set up every night whilst the road or pathway is so stopped up, and
- (3) restore any such road or pathway to its original use and condition as soon as the military necessities of the case permit this to be done

11 Where a competent military authority so orders, all persons residing or owning or occupying land, houses, or other premises in such area as may be specified in the order, or such of those persons as may be so specified, shall, within such time as may be so specified, furnish a list of all goods, animals, and other commodities of any nature or description so specified, which may be in their custody or under their control within the specified area, on the rate on which the order is issued, stating their nature and quantity, and the place in which they are severally situated, and giving any other details that may reasonably be required. If any person attempts to evade this rule by destroying, removing, transferring or secreting any goods, animals or commodities to which an order issued under this rule relates, he shall be deemed to have contravened these rules

11A * (1) Where, in the opinion of the Governor General in Council, any machinery, tools or other plant for the time being in any factory, workshop or industrial concern can be utilised in the manufacture of munitions of war, the Governor General in Council, or any officer of Government authorised by him in this behalf, may, by order in writing, require the occupier or other person in charge of such factory, workshop or industrial concern to place at the disposal of the Governor General in Council, at such time and place as may be specified in the order, the whole or any part which may be specified in the order, of such machinery, tools or other plant, and the Governor General in Council may dispose of and use such machinery, tools or plant in such manner as he may consider necessary or expedient

(2) Where, in accordance with an order made in exercise of the powers conferred by sub-rule (1), machinery, tools or other plant have been placed at the disposal of the Governor General in Council, the

* Added by Commerce and Industry Department Notification, No 1106 (Factories) dated the 23rd December 1915

Governor General in Council shall pay to the owner of such machinery, tools or other plant such compensation for any loss immediately attributable to such order, and for any services rendered or expenditure incurred in complying therewith as in default of agreement may be decided to be just and reasonable, having regard to the circumstances of the case, by the arbitration of an engineer having knowledge of machinery to be nominated in this behalf by the Governor General in Council, and such decision shall be final.

(3) If the occupier or other person in charge of any factory, workshop or industrial concern disobeys or neglects to comply with any order made in the exercise of the power conferred by sub-rule (1), such occupier or other person shall be deemed to have contravened these rules, and the authority making the order may forthwith take possession of the machinery, tools or other plant specified in the order and may dispose of and use the same in such manner as he may consider necessary or expedient.

12 The Local Government or any authority not below the rank

Power to prohibit or limit access to public buildings, public places, etc

of a District Magistrate or Commissioner of Police empowered by the Local Government in this behalf, or a competent military authority may, by order in writing, prohibit or limit, in such way as it thinks fit, access to any building or place in the possession or under the control of Government or of any local authority, or to any building or place in the occupation, whether permanent or otherwise, of His Majesty's naval or military forces or of any police force or to any public place in the vicinity of any such building or place,

12A* (1) Any officer of Government authorised in this behalf by a

Power to arrest and detain person suspected of acting with intent to assist the King's enemies in a manner prejudicial to the public safety or the defence of British India

defence of British India.

general or special order of the local Government may arrest without warrant any person against whom a reasonable suspicion exists that he has acted, is acting or is about to act with intent to assist the King's enemies in a manner prejudicial to the public safety or the defence of British India.

(2) Any officer exercising the power conferred by this rule may use any and every means necessary to enforce the same.

(3) Any officer making an arrest under this rule shall forthwith report the fact to the local Government and pending receipt of the orders of the local Government may by order in writing commit any person so arrested to such custody as the local Government may by general or special order specify in this behalf.

Provided that no person shall be detained in custody for a period exceeding fifteen days without the order of the local Government.

Provided further that no person shall be detained in custody under this rule for a period beyond a month.

13 (1) In any area in which the Governor General in Council may,

Navigation in territorial waters and rivers and channels connected therewith

by notification in the Gazette of India, declare that the provisions of this rule shall be in force, the competent military authority or any other authority empowered in this behalf by the

* Added by Home Department Notification, (Political), No 5020 dated the 17th December 1915.

Local Government, may make regulations as to the navigation and mooring of vessels in the territorial waters adjacent to British India and in rivers or channels connected therewith, and may by such regulations prohibit any vessel or class of vessels from entering any such waters, rivers or channels which such authority may consider it necessary to keep clear of vessels or of vessels of that class in the interests of the public safety or the defence of British India

(2) If any person disobeys or neglects to observe any regulation made in the exercise of the power conferred by sub-rule (1), he shall be deemed to have contravened these rules

14 (1) Every vessel in the territorial waters adjacent to British India or in any river or channel connected therewith shall comply with any regulations made under rule 13, and shall obey any orders given by way of signal or otherwise by any naval, military or other officer engaged in the defence of the coast or by any person authorised by such officer in this behalf

(2) If any vessel fails to comply with any such regulations or orders, any such officer or person may use any and every means necessary to compel compliance

(3) If any vessel fails to comply with any such regulations or to obey any such orders, the master or other person in command or in charge of the vessels shall be deemed to have contravened these rules.

15 (1) In any area in which the Governor General in Council may, Power of search, arrest and seizure by notification in the Gazette of India, declare that the provisions of this rule shall be in force, any naval, military or other officer engaged in the defence of the coast, or any person authorised in this behalf by such officer, may,—

(a) stop and search any vessel found within the territorial waters adjacent to British India or in rivers or channels connected therewith,

(b) search any place which he has reason to believe has been, is or is about to be used for any purpose prejudicial to the public safety or the defence of British India,

(c) seize anything which he has reason to believe being used or is intended to be used for any purpose prejudicial to the public safety or the defence of British India, and

(d) arrest any person whom he has reason to believe has acted, is acting, or is about to act in a manner prejudicial to the public safety or the defence of British India

(2) Any officer or person exercising the powers conferred by this rule may use any and every means necessary to enforce the same

(3) Any officer or person making an arrest or seizure under this rule shall forthwith report the fact to the Local Government, and, pending the receipt of the orders of the Local Government, may detain in custody any person arrested or thing seized

Provided that no person shall be detained in custody for a period exceeding fifteen days without the order of the Local Government

Provided further that no person shall be detained in custody under this rule for a period exceeding one month

(4) All articles seized under this rule shall be disposed of in such manner as the Local Government may direct

16 (1) The Governor General in Council or any officer of Government authorised by him in this behalf may, by order in writing, require the master or other person in command or charge of any British steamer to comply with all or any of the following directions —

- (a) to alter in any way specified in such order the date fixed for the sailing of such steamer, and to sail on such altered date,
- (b) to place at the disposal of the Governor General in Council the whole, or any part which may be specified in the order, of the accommodation available on such steamer, and to employ the same for the carriage of such persons, animals or things as may be specified in the order, and
- (c) to undertake or permit to be undertaken such structural additions or alterations on board such steamer as may be necessary to fit the same for the safe carriage of any persons, animals or things in respect of whom or of which order has been made under clause (b)

(2) Where any order has been made in exercise of the powers conferred by sub-rule (1) in respect of any steamer, the Governor General in Council shall pay to the owner of such steamer such compensation for any loss immediately attributable to such order and for any services rendered or expenditure incurred in complying therewith, as in default of agreement may be decided to be just and reasonable having regard to the circumstances of the case, by the arbitration of a person having knowledge of shipping affairs to be nominated in this behalf by the Governor General in Council, and such decision shall be final

(3) If the master or other person in command or charge of any steamer disobeys or neglects to observe any directions given in the exercise of the powers conferred by sub-rule (1), such master or other person shall be deemed to have contravened these rules

17 (1) Any person entering into or departing from British India, on being required to do so by any officer of letters, etc., out of or into British India appointed by the Local Government in this behalf, shall make a declaration as to whether or not he is carrying or conveying letters or other written messages intended to be transmitted by post or otherwise delivered, and, if so required, shall produce to the officer any such letters or messages, and such officer may search any such person and any baggage with a view to ascertaining whether such person, or the person to whom the baggage belongs, is carrying or conveying any such letters or messages

(2) The officer may examine any letters or other messages so produced to him or found on such search, and, unless satisfied that they are of an innocent nature, shall transmit them to such authority as the Local Government may, by general or special order, direct, and such authority may dispose as it thinks fit of such letters or messages

Obstruction to, or disobedience of, authority acting under these rules

18 No person shall—

- (a) voluntarily obstruct, or offer any resistance to, or impede, or otherwise interfere with, or
- (b) withhold any information in his possession which he is required to furnish under the provisions of any of these rules from, or
- (c) wilfully give false or misleading information to, or
- (d) fail or neglect to comply with any order issued by, any authority or any officer or other person who is carrying out the orders of such authority or who is otherwise acting in accordance with his duty under any of the provisions of these rules

19 (1) No person shall, without the permission of the competent military authority, make any photograph, sketch, plan, model, or other representation of any naval or military work, or of any dock or harbour work in or in connection with a defended harbour, or with intent to assist the enemy, of any other place or thing, and if any person without lawful authority or excuse has in his possession any representation of any such work of such a nature as is calculated to be useful to the enemy he shall be deemed to have contravened these rules

(2) For the purpose of this rule, the expression 'harbour work' includes lights, buoys, beacons, marks and other things for the purpose of facilitating navigation in or into a harbour.

20 (1) No person shall, without lawful authority, transmit, otherwise than through the post, or convey to or from British India, or receive or have in his possession for such transmittal or conveyance any letter or written message from or originating with, or to or intended for—

(a) any person, or body of persons, of whatever nationality, resident or carrying on business in any country for the time being at war with His Majesty, or acting on behalf or in the interests of any person or body of persons so resident or carrying on business, or

(b) any person or body of persons whose Sovereign or State is at war with His Majesty, and who resides or carries on business in British India

Provided that a person shall not be deemed to be guilty of a contravention of this rule if he proves that he did not know, and had no reason to suspect, that the letter or message in question was such a letter or message as aforesaid

(2) This rule is in addition to, and not in derogation of, any provisions contained in the Indian Post Office Act, 1898 (VI of 1898), and shall not prejudice any right to take proceedings under that Act in respect of any transaction which is an offence under that Act

21 No person shall send from British India, whether by post or otherwise, any document containing any matter written in any medium which is not visible unless subjected to heat or other treatment

Prohibition of transmission of messages in secret writing

(2) Whoever, without lawful authority, defaces or otherwise tampers with any notice posted up in pursuance of these rules shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both

28 Any person who attempts to commit, or abets or attempts to abet the commission of any act prohibited by or punishable under these rules shall be deemed to have acted in contravention of these rules in like manner as if he had himself committed the act

29 Whoever contravenes any of these rules shall, where no express provision is made herein for the punishment of such contravention, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both

30 Save as otherwise provided in rule 25 (2), no Court shall take cognizance of contraventions of the rules cognizance of any offence punishable under these rules unless the Local Government, a Chief Presidency Magistrate, a District Magistrate or competent military authority not being below the rank of a Lieutenant-Colonel has, by order in writing, consented to the initiation of the proceedings

31 The General Clauses Act, 1897 (X of 1897), shall apply for the purpose of the interpretation of these rules in like manner as it applies for the purpose of the interpretation of an Act of the Governor General in Council

32 The rules published with the following notifications of the Government of India are hereby rescinded, and savings
namely —

In the Home Department—No 1196, dated 2nd April, 1915, No 1881, dated 18th June, 1915, No 2374, dated 30th July, 1915

In the Army Department, Judicial—No 693, dated 23rd July 1915 No 1104, dated 5th November, 1915, No 1139, dated 12th November, 1915 No 1170, dated 19th November, 1915

Provided that the rescission of any such rule shall not—

(a) affect the previous operation of any rule so rescinded, or anything duly done or suffered thereunder, or

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule so rescinded, or

(c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any rule so rescinded, or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability, penalty forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if such rule had not been rescinded

Provided further, that any sanction, permission or direction given, or order, requirement or appointment made, authority issued or other action taken under any rule so rescinded shall be deemed to have been given, made, issued or taken under the corresponding provision of these rules

HOME DEPARTMENT NOTIFICATION No 1095, DATED
THE 22ND MARCH, 1915

In exercise of the power conferred by section 1, sub-section (3), of the Defence of India (Criminal Law Amendment) Act of 1915, the Governor-General in Council is pleased to direct that sections 3 to 11 of the said Act shall come into force with effect from the date of this notification in the districts of the Punjab specified in the schedule annexed hereto

SCHEDULE

Lahore Division .	{	Lahore District Amritsar District Gurdaspur District Sialkot District Gujranwala District
Jullundur Division	{	Kangra District Hoshiarpur District. Ludhiana District Jullundur District Ferozepore District
Multan Division	{	Multan District Jhang District Lyallpur District Montgomery District. Dehra Ghazi Khan District Muzaffargarh District

The 23rd April 1915

Home Department Notification No 1379—In exercise of the power conferred by section 1, sub-section (3), of the Defence of India (Criminal Law Amendment) Act of 1915 (IV of 1915), the Governor-General in Council is pleased to direct that sections 3 to 11 of the said Act shall come into force, with effect from the date of this notification in the districts of the Presidency of Bengal specified in the schedule annexed hereto

SCHEDULE

Burdwan Division	{	Midnapore District. Howrah Hooghly
Presidency Division	{	24 Parganas District Khulna
Dacca Division	{	Dacca District Faridpur Mymensing Backerganj
Rajshahi Division	{	Rajshahi District Dinajpur Rangpur Jalpaiguri Pubna

CHITTAGONG DIVISION

{ Tippera District
Noakhali "
Chittagong "

JUDICIAL

HOME DEPARTMENT, DATED 24TH DECEMBER 1915

NOTICE.—The Governor General in Council is pleased to declare that the provisions of rules 13 and 15 of the Defence of India (Consolidation) Rules, 1915, shall be in force in the areas specified in the Schedule annexed hereto

SCHEDULE

RESIDENCY OR PROVINCE	CIVIL DISTRICT
Bombay	{ Karachi (Sind) Hyderabad (Sind) Ahmedabad Broach Surat Thana Bombay City Kolaba Ratnagiri North Kanara
Madras	{ South Kanara Malabar Tinnevely Ramnad Tanjore South Arcot Chinglepur Nellore Guntur Kistna Godavery Vizagapatam Ganjam
Bihar and Orissa	Puri Cuttack Balasore
Bengal	{ Midnapore 24-Parganas Howrah Hooghly Khulna Backergunge Faridpur Dacca Tippera Noakhali Chittagong
Burma	{ Akyab Kyaukpau Sandoway Bassein Myaungmya Pyapon Hanthawaddy Pegu Thaton Amherst Tavatory, Mergui
Andamans and Nicobars	The whole
Aden	{ The whole of the territory under the jurisdiction of the Resident

HOME DEPARTMENT NOTIFICATION No 1789, DATED THE 10TH JUNE, 1915

In exercise of the power conferred by section 1, sub-section (3), of the Defence of India (Criminal Law Amendment) Act of 1915 (IV of 1915), the Governor-General in Council is pleased to direct that sections 3 to 11 of the said Act shall come into force, with effect from the date of this notification in the Nadia district of the Presidency of Bengal.

FOREIGN AND POLITICAL DEPARTMENT NOTIFICATION No 1047-I B., DATED THE 8TH JUNE, 1915

In exercise of the powers conferred by section 2 of the Defence of India (Criminal Law Amendment) Act, 1915 (IV of 1915), as applied to Berar, the Governor-General in Council is pleased to direct that the rules issued under the notification of the Government of India in the Home Department No 1196-Political, dated the 2nd April 1915, shall apply to Berar, subject to the following modifications, namely —

- (1) All references in the said rules to the Local Government shall be read as referring to the Chief Commissioner of the Central Provinces, and
- (2) All references to British India shall be read as including Berar.

FOREIGN DEPARTMENT NOTIFICATION No 1811-I. B., DATED THE 17TH AUGUST, 1915.

In exercise of the powers conferred by section 2 of the Defence of India (Criminal Law Amendment) Act, 1915 (IV of 1915) as applied to Berar, the Governor-General in Council is pleased to direct that the following further amendments shall be made in the Defence of India Rules, 1915, as applied to Berar by the notification of the Government of India in the Foreign and Political Department No 1047-I B., dated the 8th June, 1915, namely —

1. After rule 3 the following shall be inserted, namely —

3-A An order made under rule 3 shall be served on the person in respect of whom it is made in the manner provided in the Code of Criminal Procedure, 1898, for service of a summons, and upon such service such person shall be deemed to have had due notice thereof

2 After rule 4 the following rule shall be inserted, namely .—

4 A (1) Every person in respect of whom an order has been made under rule 3, shall, if so directed by any officer authorised in this behalf by general or special order of the local Government,—

Power of photographing, etc, person against whom orders under rule 3 have been made

- (a) permit himself to be photographed ,
- (b) allow his finger impressions to be taken ,
- (c) furnish such officer with specimens of his handwriting and signature ,
- (d) attend at such times and such places as such officer may direct for or all any of the foregoing purposes

(2) If any person fails to comply with or attempts to evade any direction given in accordance with the provisions of this rule he shall be punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to Rs. 1,000, or with both,

The Government of the Punjab, Notification No. 560 the 7th April 1915.

In supersession of the rules published with Punjab Government Notification No. 523, dated 31st March 1915, and in exercise of the powers conferred by section 10 of the Defence of India Act, 1915, the Lieutenant-Governor is pleased hereby to make the following rules —

RULES.

1 Commissioners may sit for the trial of any offence cognizable by them at any time and at any place within the local limits of their jurisdiction

Time and place of sitting.

President.

2 (a) The senior member of the Commission, or in case of doubt such members as the Local Government may nominate in this behalf, shall be the President of the Commission.

Appointment and powers of President.

(b) The President shall determine the times of sitting, shall pronounce the orders and judgment of the Commission, and shall have power to regulate all matters incidental to any trial before the Commission

(c) All warrants of execution and all other processes may be signed by the President for and on behalf of the Commission.

Absence of member.

3 In the absence of any member of the Commission the trial shall be adjourned for such time as the remaining members shall consider reasonable

Absence of member

In the event of the likelihood of the prolonged absence of any member of the Commission, the local Government may appoint another Commissioner in his stead, and when the Commissioner so appointed takes his seat, the trial shall be resumed from the point at which it was interrupted

Provided that upon such resumption the accused may demand that the witnesses or any of them shall be summoned and reheard.

Procedure.

4 When any person or persons are accused of more offences than one and the Commissioners are of opinion that the offences are such that they should be tried together, then the said person or persons may be charged with and tried at one trial for every such offence

Joinder of charges

5 When any person is convicted at one trial of two or more offences, the aggregate of the terms of imprisonment to which he may be sentenced shall not be subject to the limit of 14 years specified in proviso (a) to section 35 (1) of the Code of Criminal Procedure, 1898.

Modification of proviso (a), section 35 (1), Criminal Procedure Code

When the accused appears or is brought before the Commissioners, Cross examination of witness the prosecutor shall state briefly the particulars of the offence with which the accused is charged and the evidence by which he expects to prove the guilt of the accused. As the evidence of each witness for the prosecution is concluded, the accused shall be given an opportunity of cross-examining him, and after such cross-examination (if any) and re-examination (if any) the Commissioners may discharge the witness, and the accused shall not recall for further examination, or cross-examination without leave of the Commissioners, any witness thus discharged.

7 As soon as the charge is framed, the accused shall be required Witnesses for the defence, at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence in his defence.

The attendance of any witness not named in the list shall not be compelled on the application of the accused unless the Commissioners consider that his attendance is necessary in the interests of justice.

8. If any accused person at any stage of the proceedings is prevented Illness of accused by illness or other sufficient cause from being present, the Commissioners may proceed with the trial in his absence, provided that a pleader is present on his behalf.

Prosecutors

9. Any Public Prosecutor, any Police officer of or above the rank of Prosecution of offences Court Inspector and any person appointed in this behalf by the Local Government may conduct the prosecution of any case before the Commissioners.

Execution.

10 When a sentence of death is passed by the Commissioners, the Sentence of death, Commissioners shall cause the sentence to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

11. When any sentence other than a sentence of death is passed by the Other sentences Commissioners, the Commissioners in causing the sentence to be carried out shall observe the procedure prescribed for a Court in Chapter XXVIII of the Code of Criminal Procedure, 1898.

12 For the purpose of section 389 of the Code of Criminal Procedure, Successor in office to the Commissioners 1898, the District Magistrate of the district in which sentence was pronounced upon the accused shall be deemed to be the successor in office of the Commissioners.

Detention in custody.

13 (a) The Commissioners may detain in Detention, Remand custody any accused persons being tried before them.

(b) The District Magistrate shall have power to remand to custody any persons in respect of whom an order has been made under sub-section (1) of section 3 of the Act until such time as the Commissioners order that the accused shall be brought before them for trial.

Forms

14 The forms prescribed in the 5th schedule to the Code of Criminal Procedure, 1898, may be used with such changes as may be required in each case for the proceedings of Commissioners -

Use of forms

GOVERNMENT OF BENGAL NOTIFICATION No 1198 P D, DATED THE
2ND JUNE 1915.

In exercise of the powers conferred by section 10 of the Defence of India (Criminal Law Amendment) Act, 1915 (IV of 1915), the Governor in Council is pleased to make the following rules —

RULES

1. Commissioners may sit for the trial of any offence cognizable by them at such times and places as may be convenient

Time and place of sitting

PRESIDENT

2 (a) The President of the Commissioners shall be such one of the Commissioners as the Local Government may nominate in this behalf

Appointment and powers of President

(b) The President shall determine the times of sitting, shall pronounce the orders and judgment of the Commissioners and shall have power to regulate all matters incidental to any trial before the Commissioners

(c) All letters, requisitions, warrants, notices, and other processes issued by the Commissioners shall be issued over the signature of the President or failing him, over that of any one of the Commissioners.

The Commissioners shall be entitled to use either their own seal, or the seal of the District Magistrate of the district in which the trial takes place.

(d) All processes for attendance of witnesses or production of documents, papers, or things and requisitions for records shall issue in the same way as if the trial were to take place before the Sessions Court of the district

Applications for processes and for requisitions before the commencement of the trial shall be made to a Magistrate of the first class in the district where the trial is to be held, and such Magistrate shall have power to issue processes and requisitions which will be returnable before the Commissioners

The Commissioners shall have all the powers of a Criminal Court in respect of calling for records and exhibits from other Courts

ABSENCE OF COMMISSIONER

3. In the absence of any Commissioner the trial shall be adjourned for such time as the remaining Commissioners shall consider reasonable.

Absence of member

In the event of the likelihood of a prolonged absence of any Commissioner the Local Government may appoint another Commissioner in his stead, and when the Commissioner so appointed takes his seat, the trial shall be resumed from the point at which it was interrupted

Provided that upon such resumption the accused may demand that the witnesses or any of them shall be resummoned and reheard. Any witness whom the Commissioners recall may be examined at any stage of the case.

PROCEDURE

4 When any person or persons are accused of more offences than one and the Commissioners are of opinion that the offences are such that they should be tried together, then the said person or persons may be charged with and tried at one trial for every such offence

5 When any person is convicted at one trial of two or more offences the aggregate of the terms of imprisonment to which he may be sentenced shall not be subject to the limit of 14 years specified in proviso (a) to section 35 (1) of the Criminal Procedure Code, 1898

6 When the accused appears or is brought before the Commissioners the charge, if a charge has been already framed, shall be read out and explained to the accused, and he shall be asked whether he is guilty of the offence charged on claims to, be tried. If the accused pleads guilty the plea shall be recorded and he may be convicted thereon. If the accused refuses to, or does not plead or claims to be tried, and in cases in which no charge has already been framed, the prosecutor shall state briefly the particulars of the offence with which the accused is charged and the evidence by which he expects to prove the guilt of the accused. As the evidence of each witness for the prosecution is concluded, the accused shall be given an opportunity of cross-examining him, and after such cross-examination (if any) and re-examination (if any) the Commissioners may discharge the witness, and the accused shall not recall for further examination or cross-examination, without leave of the Commissioners, any witness so discharged.

7 As soon as the charge is framed, or in cases in which a charge has been framed before the commencement of the trial, at such stage as the Commissioners may direct, the accused shall be required at once to give, orally or in writing a list of the persons, if any, whom he wishes to be summoned to give evidence, in his defence

If the Commissioners think that any witness is included in the list for the purpose of vexation or delay or of defeating the ends of justice, the Commissioners may require the accused to satisfy them that there are reasonable grounds for believing that the evidence of such witness is material, and if they are not so satisfied, may refuse to summon the witness (recording their reasons for such refusal), or may before summoning him require such sum to be deposited as they think necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

If any inquiry preparatory to commitment has been held, the provisions of section 288, Criminal Procedure Code, shall be applicable.

8 If any accused person at any stage of the proceedings is prevented by illness or other sufficient cause from being present, the Commissioners may direct that he be allowed to appear in Court by a pleader, and the trial shall thereupon proceed notwithstanding the absence of the said accused person

PROSECUTORS.

9. Any Public Prosecutor, any Police Officer of or above the rank of Court Inspector, and any person appointed in this behalf by the Local Government or by the Superintendent and Remembrancer of Legal Affairs may conduct the prosecution of any case before the Commissioners.

EXECUTION.

10 When a sentence of death is passed by the Commissioners, the Commissioners shall cause the sentence to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

11 When any sentence other than a sentence of death is passed by the Commissioners, the Commissioners in causing the sentence to be carried out shall observe the procedure prescribed for a Court in Chapter XXVIII of the Code of Criminal Procedure, 1898

12 For the purpose of section 389 of the Code of Criminal Procedure, 1898, the District Magistrate, of the district in which sentence was pronounced upon the accused shall be deemed to be the successor, in office of the Commissioners

DETENTION IN CUSTODY.

13 (a) The Commissioners may detain in custody any accused persons being tried before them.

(b) The District Magistrate shall have power to remand to custody any persons in respect of whom an order has been made under sub-section (1) of section 3 of the Act, until such time as the Commissioners order that the accused shall be brought before them for trial.

FORMS.

14 The forms prescribed in the 5th schedule to the Code of Criminal Procedure, 1898 may be used with such changes as may be required in each case for the proceedings of the Commissioners

15 The records of cases tried by Commissioners shall be deposited in the record-room of the District Magistrate of the district in which the trial is held.

HOME DEPARTMENT NOTIFICATION NO 3208, DATED THE 22ND
SEPTEMBER 1915

In exercise of the power conferred by section 1, sub-section (3) of the Defence of India (Criminal Law Amendment) Act of 1915 (IV of 1915) the Governor-General in Council is pleased to direct that sections 3 to 11 of the said Act shall come into force with effect from the date of this notification in the Balasore District of the Province of Bihar and Orissa.

HOME DEPARTMENT NOTIFICATION NO. 3412, DATED THE 7th
OCTOBER 1915

In exercise of the power conferred by section 1 sub-section (3) of the Defence of India (Criminal Law Amendment) Act of 1915 (IV of 1915), the Governor-General in Council is pleased to direct that sections 3 to 11 of the said Act shall come into force with effect from the date of this notification in the Benares District of the Provinces of Agra and Oudh,

The Special Commission appointed under the Defence of India Act to try, what is known as, the Lahore Conspiracy case delivered judgment on the 13th September 1915. Before proceeding to give an account of how the conspiracy to overthrow the British Power in India was conceived, how it matured into waging war, how it was put into operation and how it failed, and before treating each accused's case individually, the Commissioner found it necessary to clear the ground by first disposing of the following law points raised by the Counsel in the case,—

1—Proof of conspiracy and relevancy of evidence under Section 10 2—Charges, 3—Responsibility of accused for acts committed after their arrest 4—Liability of dacoits under Section 396, I P C 5—Statement to the police 6—Confessions to the Zaildar 7—Testimony of accomplices, and *quasi* accomplices 8—Legality of pardon tendered to Umrao Singh 9—Spy's evidence 10—Relevancy of documents found in 1909 with Bhairu Parmanand and the Judgment of Magistrate in that case 11—Objection to the admissibility of Ichhra Singh's statement 12 Retracted confessions 13—*Waging War* and abetment thereof 14—Approver Statement

The following is a summary of the findings of the Commission.

There were originally 63 accused, but two were discharged during the trial and judgment was reserved regarding the remaining 61. Of the 61 persons the Commission sentenced 24 to death and 27 to transportation for life (eleven with a recommendation to mercy). Six were sentenced to terms of imprisonment and four were acquitted.

In re King Emperor *versus* Anand Kishor and others

Charges under section 121, 123, 396, and *others*

FOREIGN DEPARTMENT, NOTIFICATION DATED THE 22ND JANUARY 1910.

The following papers are published for general information.

I.

Letters from His Excellency Lord Minto to certain Ruling Chiefs and the replies thereto received up to date.*

1. Letter to His Highness the Nizam of Hyderabad, dated the 6th Aug 1909
2. Reply of His Highness the Nizam of Hyderabad, dated the 15th Oct 1909
3. Reply of His Highness the Maharao of Kota, dated the 28th Aug. 1909
4. Reply of Her Highness the Begum of Bhopal, dated the 4th Sep 1909
5. Reply of His Highness the Maharao Raja of Bundi, dated the 6th Sep 1909
6. Reply of His Highness the Maharaja of Orchha, dated the 23rd Sep 1909
7. Reply of His Highness the Raja of Dewas, Senior Branch, dated the 28th Sep, 1909
8. Reply of His Highness the Nawab of Tonk, dated the 29th Sep 1909.
9. Reply of His Highness the Nawab of Jaora, dated the 30th Sep. 1909.
10. Reply of His Highness the Raja of Ratlam, dated the 6th Oct 1909.
11. Reply of His Highness the Maharaja of Kishangarh, dated the 17th Oct, 1909.
12. Reply of His Highness the Maharana of Udaipuri (Mewar), dated the 19th Oct. 1909.
13. Reply of His Highness the Maharaja of Jammu and Kashmir, dated the 28th Oct. 1909
14. Reply of His Highness the Maharaj Rana of Dholpur, dated the 30th Oct. 1909
15. Reply of His Highness the Maharaja of Rewah, dated the 2nd Nov-1909.
16. Reply of His Highness the Maharaja of Jodhpur, dated the 3rd Nov, 1909.
17. Reply of His Highness the Maharaja of Mysore, dated the 11th Nov 1909
18. Reply of His Highness the Maharaja of Baroda, dated the 19th Nov. 1909
19. Reply of His Highness the Maharaja Scindia of Gwalior, dated the 3rd Dec 1909
20. Reply of His Highness the Maharaja of Bikaner, dated the 29th Dec. 1909
21. Letter of His Highness the Nawab of Rampur, dated the 12th Sept 1909, to His Honour the Lieutenant-Governor of the United Provinces of Agra and Oudh
22. Letter of His Highness the Raja of Tehri, dated the 20th Sep 1909, to His Honour the Lieutenant-Governor of the United Provinces of Agra and Oudh

* [Separate letters were addressed to each of the Ruling Chiefs. The letter to His Highness the Nizam of Hyderabad will indicate sufficiently the purport of the letters.]

I From—His Excellency the Viceroy and Governor-General of India

To—His Highness the Nizam of Hyderabad, dated the 6th August 1909

After compliments—Now that seditious people have endeavoured to spread their nefarious doctrines in several of the Native States of India, I feel that it is desirable to address Your Highness on the subject. As those doctrines are subversive of internal peace and good government, the matter is one in which the interests of the Government of India and of the Ruling Princes in India are identical, and Your Highness will, I am confident, agree with me that it is appropriate that we should exchange opinions on the subject with a view to mutual co-operation against a common danger. For although in Your Highness's dominions there is no serious cause for anxiety at present—a result mainly due to the action of Your Highness in dealing with seditious manifestations—I feel that the time has come when we may advantageously concert measures and prepare a policy to exclude effectually seditious agitation. It is very true that in such a matter to be forewarned is to be forearmed.

I wish to assure Your Highness that I do not contemplate or counsel the adoption of any general rules or general course of action. The circumstances of different States vary so greatly, the treaty relations which unite them to the Paramount Power are so diverse, that any general policy would create endless difficulties, even were a general policy desirable. Your Highness will probably agree with me that each State must work out its own policy with reference to local conditions. Should it be necessary to combine in some matters such as in circulating information, and the surveillance of individuals suspected of propagating sedition, I shall still be firmly of opinion that each State should deal with its own problems.

But my advice in regard to the policy to be adopted is likely to be sought and I should greatly value a full and frank expression of Your Highness's opinion as to the measures which will be effectual in keeping out of Native States the insidious evil of sedition, and the manner in which I could assist towards this end. I feel confident that Your Highness, the old and valued ally of the British Government, will gladly help me with your wise and experienced advice.

(2) From His Highness the Nizam of Hyderabad, dated the 15th October 1909

After Compliments—The Hon'ble Mr M F O'Dwyer presented to me personally on the 26th August 1909 Your Excellency's esteemed Khairat of the 6th idem regarding the endeavours made by seditious people to spread their nefarious doctrines in several of the Native States of India.

2 I quite agree with Your Excellency in thinking that these doctrines are subversive of internal peace and good government, and that the matter is one in which the interests of the Government of India and of the Indian Princes are identical. I am deeply sensible of the kind consideration with which you have taken me into your confidence and asked me to exchange

opinions with Your Excellency with a view to mutual co-operation against a common danger. Once the forces of lawlessness and disorder are let loose there is no knowing where they will stop. It is true that compared with the enormous population of India the disaffected people are a very insignificant minority, but given the time and opportunity there exists the danger of this small minority spreading its tentacles all over the country, and inoculating with its poisonous doctrines the classes and masses hitherto untouched by this seditious movement.

3 I thank Your Excellency for telling me that in my dominions there is no serious cause for anxiety at present, and that the result is mainly due to my action in dealing with seditious manifestations. I trust I may not be considered an optimist in indulging in the hope that, under God's blessing, there will probably be no cause for anxiety in the future also. My people as a rule are contented, peaceful and law-abiding, and I can say, with pardonable pride, that they are bound to me by ties of affection and loyalty. And as Your Excellency has been pleased to address me by inherited title as the old and valued ally of the British Government, my people's loyalty to me means loyalty to the British Government also. I need hardly say that it has always been my endeavour to uphold and maintain the traditions of my house. From the very outset, my policy has been to trust my people and to show them that I trust them. I have abstained from causing them alarm by issuing manifestos warning them against sedition. But at the same time I have not been unmindful of the existing danger and a very strict watch has been kept over local officials, more especially over those who are close to, and might be in sympathy with neighbouring seditious places in British India. Orders have been issued to the Police and District Magistrates not to allow any meetings to be held in which there was any likelihood of inflammatory speeches being made. Petty officials and other persons having a tendency to sympathise with the movement have from time to time been warned, and some of the former have been transferred, in order to break up any attempt to form a clique or combination for undesirable purposes. The head of the Education Department has been specially directed to exercise strict supervision over teachers and students and to prevent their participation in any political demonstration whatever.

4 So far, any disaffected people coming from outside have not been able to gain a footing in my dominions. Judicious but summary action is taken under my orders in all such cases. Instances have occurred of disaffected individuals from British India arriving here, but my Police have ever kept a careful watch on them, and they have been promptly but quietly sent away from my territory. In matters of this kind, so far as my own dominions are concerned, I implicitly believe in working quietly but with promptitude and firmness. Believing as I do, in the policy of deportation of undesirable individuals from my dominions, I need hardly say that I am in full sympathy with the Regulation of 1818 which I consider most efficacious in dealing with persons known to be given to sedition.

5 I am at one with Your Excellency in believing that no general rules or general course of action could be laid down as regards the Native States of India. The circumstances of different States are so diversified that one general policy for them all would not certainly be desirable. I am also in thorough agreement with your views that each State should

work out its own policy with reference to local conditions. But it is necessary that there should be perfect co-operation in such matters as circulating information and surveillance of individuals suspected of propagating sedition. For this purpose I would ask Your Excellency to allow your Criminal Investigation Department to correspond directly and freely on all such subjects, with my Inspector-General of the District Police who may be trusted to exercise discretion and judgment in such matters. It is obvious that unless this procedure is adopted, delays are likely to occur in obtaining information as regards the arrival or departure of suspected individuals. In the same manner I will issue orders to my Police to correspond freely in such matters with the Police in British India.

6 Your Excellency has been so kind as to ask my advice in regard to measures which may prove effectual in keeping out of Native States the insidious evil of sedition, and the manner in which Your Excellency should assist towards this end. My knowledge of the conditions obtaining in different Native States in India is very limited, but if I may venture to express an opinion it would be that Your Excellency should as often as possible write to some principal Ruling Princes and consult with them as regards all important matters touching the welfare of not only the Native States but also the Indian Empire as a whole. I look upon the Native States in India as the pillars of the Empire, and I feel sure that the Ruling Princes will prove worthy of the confidence and trust that may be reposed in them. Indeed it cannot be otherwise, because as Your Excellency rightly observes in your Kharita, the interests of the Government of India and of the Ruling Princes in India are in this respect quite identical.

7 There are, however, two or three suggestions that I would make for Your Excellency's consideration —

(1) The Government of India as well as the Provincial Governments and Indian Durbars should as often as possible issue Press communiqués for the purpose of officially contradicting or correcting false allegations or exaggerated reports, and call upon the newspapers that publish such things to print formal contradiction or correction as directed. It is no longer safe or desirable to treat with silent contempt any perverse statement which is publicly made, because the spread of education, on the one hand, has created a general interest in the news of the country, and a section of the Press, on the other hand, deliberately disseminates news calculated to promote enmity between Europeans and Indians, or to excite hatred of Government and its officers in the ignorant and credulous minds. Official warnings to editors, publishers, proprietors and printers of the offending papers would also have a salutary effect and would probably often save the necessity of public prosecutions which may possibly do more harm than good.

(2) The Native States should prohibit all clubs, libraries and other institutions from subscribing to any papers or journals believed to be instrumental in spreading sedition, and officials subscribing to or taking in such literature should be told that they would be looked upon with disfavour. I have myself taken the initiative in this matter and have issued orders to that effect.

(3) I am also inclined to think that itinerant agitators (often disguised as Sanyasis) are not watched as thoroughly as they should be. Such persons should be followed from province to province and regularly handed over for surveillance.

8 The experience that I have acquired within the last 25 years in ruling my State, encourages me to venture upon a few observations which I trust will be accepted in the spirit in which they are offered. I have already said that my subjects are as a rule contented, peaceful and law-abiding. For this blessing I have to thank my ancestors. They were singularly free from all religious and racial prejudices. Their wisdom and foresight induced them to employ Hindus and Muhammadans, Europeans and Parsis alike in carrying on the administration, and they reposed entire confidence in their officers, whatever religion, race, sect or creed they belonged to. Hence it followed that in the early part of the last century Raja Chundoo Lal was Minister of Hyderabad for over a quarter of a century. The two Dastardars (Record-keepers of the State) were Hindus whose descendants still enjoy the jagirs, offices and honours conferred by my predecessors. Inheriting as I did the policy of my forebears, I endeavoured to follow in their footsteps. My present Minister, the highest official in the State, is, as Your Excellency is aware, a Hindu. One of my four Moin-ul-Mahams is Mr. Casson Walker whose services have been lent to me by the Government of India. The Secretary to my Government in the Revenue Department is Mr. Dunlop who has retired from the British service and Mr. Hankin, who is a Government of India official, is the Inspector-General of my District Police. Although I am a strict Sunni myself, some of my Muhammadan noblemen and high officers of the State are Shias. Arabs and other Muhammadan races number among my State officials. Hindus of all sects, creeds, and denominations serve in my State and many hold high positions. The Revenue administration of one half of my State is at present entrusted to two Parsis who are Subadars (Commissioners of Divisions). It is in a great measure to this policy that I attribute the contentment and well-being of my dominions. Your Excellency will, therefore, quite understand how gratified I was to learn of the wise, generous, and liberal policy pursued by Your Excellency and the Secretary of State for India in giving effect to the principles, announced in the Queen's Proclamation of 1858 and solemnly reaffirmed in the King-Emperor's gracious message to the Princes and Peoples of India in 1908, by appointing an Indian as a member of Executive Council and two Indians as members of the Council of the Secretary of State. This liberal policy as also the enlargement of the Legislative Councils will, I earnestly trust, serve to allay the present unrest and to remove altogether the seditious movement which is happily confined to a very small minority.

9 I am a great believer in conciliation and repression going hand in hand to cope with the present condition of India which is but transitory. While sedition should be localised and rooted out sternly and even mercilessly, deep sympathy and unreserved reliance should manifest themselves in all dealings with loyal subjects without distinction of creed, caste or colour. I am exceedingly glad that this view has commended itself to Your Excellency and I feel sure that the Indian Empire has now entered on a new and brighter era of peace and prosperity under the benign reign of His Majesty the King-Emperor.

(3) From His Highness the Maharao of Kota, dated the 28th August 1909

After compliments —I beg to acknowledge the receipt of Your Excellency's Khairat of the 6th August intimating that in Your Excellency's opinion the time had come when concerted action should be taken between the Government of India and the Ruling Princes against all persons endeavouring

to spread seditious doctrines and to incite feelings of hostility among the people against the constituted forms of Government

So far as my State is concerned I am happy to be able to inform Your Excellency, with the utmost confidence, that the baleful disease of sedition is absolutely unknown and, so far no members of the party of sedition, either openly or disguisedly, have attempted to preach their noxious doctrines among my people. They probably were all aware that any such attempt would not be tolerated for a moment and that, if made, the persons concerned would be immediately turned out of the State

Knowing that my people were engrossed in their own agricultural pursuits, that only an infinitesimal minority ever read a newspaper and that the knowledge that in certain remote parts of India a disloyal faction had endeavoured to foster ill-feeling to the British Government and had even perpetrated murderous and violent acts was confined to a few of the higher and official classes, I, at first, did not consider it desirable to excite the childlike curiosity of my people to know what it was all about, and thus draw their attention to the fact that such feelings did unfortunately exist and that unlawful acts of sedition had occurred in India, by promulgating through the State special orders dealing with sedition and with explosive substances. Moreover, the promulgation of such orders was not really necessary seeing that, although justice is administered on the lines of the British Codes, personal rule in the Kota State has not been entirely abandoned for rule by legislation and the Kota Courts would have no hesitation in trying a person for an offence not specially or very definitely defined in the Penal Code if directed to do so by the Durbar

But although the issue of such orders was quite unnecessary so far as the Kota State was concerned, yet cases of attempts to preach sedition against the British Government having been discovered in other Native States, I thought it desirable to show the sedition-mongers in other parts of India that the Kota Durbar was ready to do all they could, however slight their power might be, to assist the British Government, a Government to whom the State was bound by feelings of the deepest loyalty, devotion and gratitude, to stamp out sedition. Such action seemed likely to deter sedition-mongers from attempting to visit the State for the furtherance of their detestable ideas

I accordingly issued orders on the 26th July 1909, which, I hope, will effectually prevent any attempts in future in my State either to make seditious utterances or to commit acts of violence by explosive substances

Copies of my orders have, I understand, been forwarded to the Hon'ble the Agent to the Governor-General and have perhaps by now been submitted for Your Excellency's information. I trust that Your Excellency may be pleased to approve of them

Special orders for the prevention and punishment of persons attempting to incite sedition or commit acts of violence by means of explosive substances on the lines of the British Acts having thus been promulgated, there only remains for me to reply to Your Excellency's suggestion regarding the advantage to be obtained by co-operation in certain matters such as in circulating information and watching suspicious characters

I venture to state that I am entirely in favour of the adoption of Your Excellency's suggestion which, if followed, should be of much practical value

I am happy to be able to inform Your Excellency that in this respect also I have been so fortunate as to have been able to anticipate Your Excellency's kind advice. The preventive measures already taken should, I think, be sufficient to prevent seditious-mongers establishing any footing in my State, and I would only add that the task of watching suspicious characters will be greatly facilitated if information, when available, of the probable visit of such persons to my State can be communicated by the British authorities.

In conclusion, I beg to assure Your Excellency that, if any further action in this matter on my part is desired, I will be only too happy to do my utmost to carry into effect the wishes which Your Excellency may be graciously pleased to communicate to me.

(4) From Her Highness the Begum of Bhopal, dated the 4th September 1909

After compliments—I have to thank Your Excellency for your Kharita of the 6th August in which Your Excellency has asked my advice as to the best way of keeping sedition out of Native States.

I quite agree with Your Excellency in thinking that the seditious are working not only against the British Administration, but also against the established order of Government and society. It is apparent that we are all in the same boat and those, therefore, who are working against the established order of Government are working against us.

The various Native States of India are so different to each other in the characteristics of their peoples and other circumstances of equal importance, that it is only the individual rulers of these States who can gauge these matters accurately in so far as their respective peoples are concerned. With due consideration to these circumstances, every Ruling Chief must, I suppose, have, on the lines of the steps taken in this connection by Your Excellency's Government, already thought out the best means for keeping or rooting sedition out of his State. In respect of all this important matter, I can, generally speaking, think of the following measures—

I The seditious newspapers to be suppressed and their career of mischief brought to a summary end.

II Every Ruling Chief to establish, or if need be, to increase the strength of Secret Police within his territory.

III All Ruling Chiefs to co-operate with each other in the matter of supplying information and watching bad characters. The Indian Government to be kept informed through the Political Department.

IV Supervision of teachers in the schools. A little education in etiquette and some religious instruction to be introduced into the curriculums everywhere, so that proper foundation be laid of that loyalty and obedience without which education is not worthy of its name.

V Exemplary punishments to be meted out to seditious whenever caught working to attain their nefarious ends.

As far as my own State is concerned, I have every hope that the steps that have already been taken will be fruitful of good results and that my people will, God willing, remain as free from all contamination as they did during the troubled days of 1857.

HIS HIGHNESS THE MAHARAJA OF ORCHHA.

- (5) From His Highness the Maharao Raja of Bundi, dated the 6th September 1909

After compliments—I am in receipt of Your Excellency's very kind Kharita, dated the 6th August, from Simla, on the subject of the suppression of seditious movements in the Native States, and beg to thank Your Excellency very much for your kindness in asking my advice on so important a subject.

As remarked, the matter is really one in which the interests of the Paramount Power and the Ruling Chiefs are identical, and I beg to assure Your Excellency that I am always ready to co-operate with and serve the British Government, as far as lies in my power, in any matter that concerns the welfare of the empire

The peace and benefits which India and the Ruling Princes have enjoyed under the kind aegis of the benign and merciful British Government are well known; and it is therefore our bounden duty to see that nothing should happen within our territories that may be prejudicial to the peaceful administration of the empire

I have already issued a notification throughout my State warning all my subjects and officials against the spread of sedition and disloyalty to the established Government and imposing upon them the duty of arresting any dangerous or suspected persons whenever found in the State. Through Your Excellency's kindness no dangerous persons seem to have visited my State as yet, but if any venture to do so in the future they will be promptly arrested and deterrent punishment awarded them and information thereof will be submitted to the Political Officer for communication to Your Excellency

From the copy of the notification which I beg to enclose herewith for Your Excellency's kind perusal, Your Excellency will, I hope, note that it has been printed in the Bundi dialect so that everybody might be able to understand it and act accordingly. A reward has been promised to all who help in this desirable object

- (6) From His Highness the Maharaja of Orchha, dated the 23rd September 1909

After compliments—I thankfully beg to acknowledge the receipt of Your Excellency's kind and welcome letter of the 6th August 1909. Really I am very much obliged to Your Excellency for kindly inviting my opinion on an important subject which greatly concerns the Indian Government

It is evident from some cases of sedition occurred in certain Native States that the seditious party is endeavouring to get a footing in the Native States. As far as I can think I am perfectly sure that no Native Chief in India will ever like this disloyal movement getting into his State.

The loyalty and the devotion of the Indian Chiefs for the benign British Government are well known to Your Excellency. Moreover as well stated in Your Excellency's letter, I quite agree with Your Excellency that sedition and anarchism are injurious not only to the Indian Government but also to all administrations and the established order of society, the

prevention of which is beneficial both to the Paramount Power and the Indian Chiefs alike and therefore I am perfectly sure that no Chief will ever sympathise with such agitators and will spare no means to prevent such agitation and punish the agitators

I am heartily thankful to Your Excellency for the assurance Your Excellency has given in the letter about the non-interference policy of the Government in the internal affairs of the Native States

I beg to inform Your Excellency that my State is quite free from this sedition and anarchy. My subjects have no such disloyal feelings up till now, and I pray that the Almighty will always be pleased to preserve their such feelings. However as a precautionary measure I have addressed a message in vernacular to my subjects for general information and warning, asking them to act up to my orders, to continue such loyal feelings towards His Majesty's Imperial Government, the translation of which I annex herewith for Your Excellency's kind perusal

Over and above this I have instructed my officers to be always on the watch for any suspicious character and to have a very keen eye over his movements, arrival, departure, &c, and to inform the neighbouring district officers when necessary without any delay, and I hope the neighbouring district officers will adopt the same measure. As far as I know I think I have adopted such a policy that sedition is not probable in my State, and it is not likely that any suspicious character if imported from outside may escape detection and punishment.

I am doubtful how far my humble opinion will meet with Your Excellency's approval, however I beg to say that if Your Excellency sees no objection to such a course I would like to convene a meeting of my brother Chiefs of Bundelkhand at a convenient place to all, and will put before them my suggestions regarding the prevention of sedition and after discussing the necessary points with them on the important subject of inter-statal co-operation I shall then be in a position to inform Your Excellency of the final result of our meeting, and I hope this will produce better results. I need hardly inform Your Excellency that my house has ever remained loyal to the British Government. The services rendered by my ancestors in the trying time of the Mutiny of 1857 are well known to Your Excellency. As for myself I respectfully beg to inform you that I was not wanting in those feelings of loyalty to the British Crown and as a proof of this my services are well known to Your Excellency when in 1893 dakaiti was raging in Lalitpur and Gwalior territories and was spreading in the whole of Bundelkhand. On this and on all former occasions my loyalty has been amply appreciated and rewarded by the benign British Government from time to time. Let me assure Your Excellency that I always pray for the peace and prosperity of the benign British rule under whose fostering care the whole of India enjoys every blessed happiness of justice, order and tranquillity.

In conclusion, let me express my hearty thanks for the keen interest Your Excellency always takes in the welfare of Indian Chiefs generally and my State and myself particularly.

(7) FROM HIS Highness the Raja of Dewas, Senior Branch, dated the 28th September 1909

After compliments—It is with extreme pleasure and with intense feelings of thankfulness that I acknowledge Your Excellency's Kharita, dated the 6th August 1909, regarding the suppression of sedition which is of equal importance both to the Paramount British Government and the Ruling Princes. I am in absolute agreement with Your Excellency's view that the time has arrived when we may be well prepared to work hand in hand with each other in circulating information and watching suspicious characters connected with sedition. Of course, Your Excellency has been pleased to state in your Kharita that there is no contemplation of formulating general rules or general course of action which may involve interference in the internal government of Native States. I for one fully realise Your Excellency's sincere feelings in this matter and assure Your Excellency that not for a moment did I doubt otherwise. Further I am deeply indebted to Your Excellency for offering assistance to Native States generally and to my State in particular, in case of need. Here I need hardly write that my State and myself are always ready at the service, whenever required, of His Imperial Majesty King Edward VII, Emperor of India, and his Empire.

2. There can be no question, as Your Excellency expressed in your Kharita, that the party of sedition is endeavouring to extend its dark and malicious operations even in Native States. It is a well-known fact that the endeavours of the seditious party are directed not only against the Paramount British Government, but against all constituted forms of government in India, through an absolutely misunderstood sense of 'Patriotism' and through an attachment to the popular idea of "Government by people," when every level-headed Indian must admit that India generally has not in any way shown its fitness for a popular Government. Personally, if I were to say a few words on this subject, I should declare that it is historically proved and even well realised by all sound-minded people that India cannot really attain to the standard of popular Government as understood in the West. Reasons for this are manifold and I feel, I may be digressing from the main point contained in Your Excellency's Kharita, if I were to write those reasons here in full.

3. I consider it a great privilege to have been asked by Your Excellency to offer my suggestions for suppressing the seditious movement. Now I proceed to make the following few suggestions, which may, I hope, be of some use in dealing with sedition throughout British India and Native States, if they recommend themselves to Your Excellency.

(1) *Education*—It is a well-known fact that the germs of the present unrest in India were laid in that benefactor of human race, viz., education. It sounds strange, but there it exists. It is not that education itself is injurious, but much depends on the principles underlying an educational movement. In my opinion, the higher education, temporarily at least, may be made so dear as to prevent every ordinary man who generally has not got the instinct for taking the best advantage of education, and the whole system of education, from primary to higher, may well be combined, as far as practicable, with moral education. Personally, I am all for increasing educational institutions for the use of the public, but I feel that above primary education, which, I must say, ought to be as free as possible and within the reach of almost every person, it is certainly now-a-days a point

for discussion as to whether higher education may not be made dear, I realise the difficulties of this question and would suggest that at least the principles of moral education may be more widely attended to in the educational line and that every head of an educational institution may be strictly directed to prevent boys and girls from reading or obtaining seditious writing or mixing with seditious gangs or meetings. Of course, a teacher cannot be responsible for a student after his school-hours, but it may be circulated to all the parents of the boys and girls, who wish to enter their children in schools or colleges, that they will have to sign a bond for their good and clean conduct in respect of seditious movements, before they are admitted, and thus put the responsibility on the parents as well. Further, all private educational institutions may be obliged to conform to the above-mentioned principles.

(2) *Press*.—Really speaking a good many of the present newspapers in India deserve to be totally stopped. But there is one point which may be taken fully into consideration. It is this. If the Government stop newspapers totally, there is always a likelihood of more secret societies being formed to exchange views on malicious and dishonourable topics. Hence, the question arises whether it is better to allow views on the movement to be given a free or controlled vent to them and thus get an idea of the movement, or to suppress the publicity of the views totally and thus give a chance to further secret societies. At the same time Indian papers have reached a stage when they cannot be allowed to be published without more control, because they have been the cause of greatest harm. Hence I suggest that both in British India and in Native States, the respective local Governments may appoint a committee or a person or an officer to review all the writings of the Press, excepting those pertaining to commerce, medicine, health and general advertisements, and those writings that are to be published under the orders of the Paramount British Government or under the orders of the Durbars of the Native States, before they are published, and thus prevent the minds of the people from being corrupted for nothing. Further, any violation of laws framed for directing the Press, may be severely and unfailingly checked. These remarks may also apply equally well to all kinds of publications and writings, such as pamphlets and books.

(3) *Summary trials and political punishments*.—It is, in my opinion, very necessary that seditious offences being political offences, they may be disposed of in a summary method and much publicity to the proceedings may be stopped, because this for nothing creates misunderstandings and gives room for unnecessary criticism. This may be extended practically throughout British India by the Paramount Government of India and by the Ruling Princes of all the Native States throughout their territories. In this connection, it must be stated that, whenever possible, the Political Law, on the lines of Act III of 1818, may be enforced in more instances and offenders may either be deported to other places from their own native places or kept in local jails till further orders, when it is thought proper to release them. I lay great stress on these two points and feel confident that, though they may appear arbitrary to some to start with, yet these methods of dealing with political offenders in India are quite suited to the country and the people and may prove of immense help to the British Government and to the Native States in the end.

(4) *Sadhus and Fakirs and others of the kind*—Under the guise of religious mendicants, it is quite probable that many Sadhus and Fakirs and others of the kind move about preaching or communicating seditious views. Such people may be strictly watched and every person, who suspects any of these religious mendicants in any way connected with sedition, may be made compulsory by law to report the matter under penalty. Further, if such mendicants live or assemble in private houses temporarily or permanently, the owner of the house may be made by law responsible. The same remarks may apply to religious Samajes or bodies.

4 The above-stated are the few suggestions of mine for suppressing sedition in British India and for the Native Princes to do the same in their territories, which, I hope, may recommend themselves to Your Excellency, and I trust, Your Excellency will excuse me if there is delay in replying to Your Excellency's Kharita, but I can assure Your Excellency that the delay is due to the weightiness of the subject.

5 In conclusion, I need hardly assure Your Excellency of my readiness to do my utmost to put down sedition within the limits of my territory and whenever necessary to be of help to the Paramount Government outside the State, because I fully realise that the interests of the Paramount British Government and my State are quite identical in this matter, and further it is, I consider, my duty to be, as I have said above, ready at the service of His Imperial Majesty the King-Emperor, and to put a stop to anything improperly said, written or done against His Imperial Majesty's Government.

(8) From His Highness the Nawab of Tonk, dated the 29th September, 1909

After compliments—I beg to acknowledge the receipt of Your Excellency's kind Kharita, dated the 6th August 1909, received through the Political Agent, Haraoti and Tonk, and beg to express my heartfelt thanks that I have been called on to express an opinion on a matter which is of equal concern both to the Imperial Government and to the Native States. I greatly regret that there should exist such persons who have adopted or may adopt an attitude of sedition and insubordination against the British Government. They seem to have forgotten the innumerable obligations which they owe to the British Government—a Government whose sole care is to provide for the prosperity and welfare of the people of India, who has taught them civilisation, opened paths of progress for them and who preserves peace and order. Surely it is the greatest ingratitude to adopt a hostile attitude against such Government.

It is not secret from Your Excellency or the Imperial Government that I am a loyal and staunch friend of the British Government and wish to assure Your Excellency that I shall never deviate from this path and will ever remain a loyal supporter of the British Government. The ties that connect this State with the Imperial Government are stronger than those of other States, inasmuch as this State was granted by the British Government itself. I thus naturally look upon the extermination of the enemies of the British Government as my bounden duty, and it was with a view to prevent the propagation of sedition that six months ago I passed an Act, and as necessity may arise from time to time necessary additions will be made therein prohibiting my people from any connection or correspondence

with those who have made it their profession to preach sedition against the British Government and directing them not to cherish or entertain any ideas antagonistic to the constituted form of Government, otherwise they will suffer severe penalties

I concur with Your Excellency's proposal that the British Government and the Native States should inform each other of the arrival and movements of any seditious persons, and I assure Your Excellency that this principles shall be rigidly followed in my State.

(9) From His Highness the Nawab of Jaora, dated the 30th September 1909.

After compliments — I beg to acknowledge, with thanks, the receipt of Your Excellency's Kharita of the 6th August 1909

I myself had, some months ago, conceived the idea expressed in the first part of Your Excellency's letter about sedition, and dreading lest its progress should reach the limits of my State, I had taken such steps as I could to guard against the contending evil and influence

I might add, for Your Excellency's information, that on the 30th October 1898, the Jaora Durbar communicated to the Political Agent in Malwa that the Jaora State does not contain either the admirers of Shivaji or the followers of Tilak and is therefore entirely free from any sedition or mischievous agitation. The ruler and his subjects are as ever united and strong in their loyalty and allegiance to the Crown * * * if there happens to be any (seditious case) in future, the Durbar would lose no time in dealing strongly with the offender and in bringing the matter to your notice"

I am very glad to say that what I declared ten months ago, holds true down to this day and I confidently trust that the State shall as hitherto remain free from the taint for ever

I beg to assure Your Excellency that any measures other than those described above which Your Excellency's Government may suggest or prescribe shall be most willingly acted upon by the Durbar

I might also draw Your Excellency's attention to the Press. I admit that the Press has much to do in elevating mankind, but also think that without restriction or control, the Press is as just apt to err on the wrong side as to mark the right path on the other. I might go further and say that it is the Press, or certain papers solely that have been the cause of widening the gulf between the rulers and the ruled, and that they are mainly responsible for the present situation. They have been the instruments of disseminating seditious ideas and thoughts among the public. Masses of the Indian population of any sect or creed are loyal to the core of their heart to the British Government. It is therefore necessary that the Press should not be allowed to play too freely with the ignorant public and excite religious feelings and susceptibilities of one community against the other. Consequently some measures are imperative to effect a closer scrutiny and control over the Press

My next point is education. Religious education is the key-note to the formation of character. This important branch has to be neglected in schools, because owing to diverse creeds and nationalities, the Government cannot undertake to impart religious instruction and the people

themselves do not seem to realise that ideal, as their sole anxiety is to give them English education as soon as their children are fit to receive it. With religious education there is also a subservience of indigenous language or mother tongue, which keeps back the educated youths from imbibing properly the noble traditions of their ancient lineage and family. They join the school early where they spend only a few hours a day and the rest with bad associates at home. If residential institutions were established with every school, it will have a beneficial effect on the moulding of the character of the boys. As for the required funds, the Government cannot of course, take the whole burden upon its shoulders and the people must come forward to help themselves.

The desirable results may also be secured in some measure by the selection of good teachers, men who are endowed with noble ideas, matured council and judgment and free from any of the dangers of a little knowledge. It matters little to what religion these may profess to belong, since the analysis of all religions in the world shows in its composition the elements of the same code of morals and virtue. The pupils may safely be put in charge of such good and able hands not during school hours only, but for the whole period of their educational life.

Another cause which has assisted in bringing on the present state of affairs is the treatment of seditious according to law. Undoubtedly the British Government cannot but deal with such cases according to law, but what I mean is that the rigour of the law in particular matters calculated to endanger the Sovereign's prestige should be severe and quick. Regular trials like those that have recently been held in Bengal do, in my humble opinion, more harm than good, as the longer the proceedings are protracted the greater are the chances for craftiness to do its work.

I feel under deep obligation to Your Excellency for your so kindly offering assistance to my State, and beg to say that whenever I and my State stand in need of help, I shall most certainly approach Government.

(10) From His Highness the Raja of Rutlam, dated the 6th October 1909

After compliments — In acknowledging the receipt of Your Excellency's Kharita regarding measures to be adopted against the party of sedition which has been found endeavouring to establish branches in certain Native States I would, in the first place, express my feeling of gratitude and pride that a statesman like Your Excellency should consider me worthy of being the recipient of your confidence and take counsel with me in this matter, which is indeed of grave importance both to the Supreme Government and to the Native Princes.

2 In the second place, I am delighted to be able to observe that within limits of my State no seditious or revolutionary movement exists. On the contrary, all my subjects and officials love the British Government as much as they love me, and should any evil minded persons enter this State clandestinely to sow seeds of disaffection towards the Government, they will, I certainly prophesy, meet with scant success and on being detected will certainly fare very badly indeed.

3 The blessing of peace under the enlightened and benign British Government, which blessing was unknown in olden times, is threatened by this baneful movement, and it is the duty of every Native Prince to

readily combine with the Paramount Power to eradicate the rank growth of seditious and revolutionary spirit observable in a few ungrateful persons belonging to two or three communities, who have profited the most by the educational facilities graciously offered by the civilised British rule

4 To be able to thwart the machinations of the party of sedition, we must have a clear notion of their *modus operandi*. The society seems to have been divided into four departments, *viz*—(1) the mechanical, (2) educational, (3) the journalistic, and (4) the spiritual

5 We have therefore to deal with (1) the actual murderers who are the maddened school-boys or collegians, (2) the imparters of national education, who literally as well as metaphorically teach the young idea how to shoot, (3) the ultra-patriotic journalists who always criticise Government policy adversely and try to make people believe that there is legalised and systematic loot in the present *regime*, and (4) missionaries or religious workers who are by no means as innocent as lambs and work on the religious sentiments of the villagers and the ignorant, whose number is legion

6 Now, the Penal Code, the Explosive Substances Act and other Acts passed from time to time for maintaining law and order will look after the first department effectually. It is, however, necessary to advise that the Government will lose no time in framing new laws whenever the existing legislation will be found inadequate to cope with any emergency

7 It has been observed in a majority of cases that it is among the student population that the agitation has most found a home. The conspirators have found that their older countrymen are not amenable to their preachings which are apparently shortsighted and of a disastrous character and have therefore worked on the highly impressionable youthful minds. The University reform scheme will deal with this department. The selection of teachers, especially of heads of schools and colleges, should be carefully made, or the young mind will be allowed to be poisoned till the disease will become chronic and incurable.

8 The Newspaper (Incitement to Offences) Act deals with the journals which are too patriotic. But legal technicalities which are growing more and more complex every day afford so many loop-holes through which the offenders often escape when prosecuted. This therefore necessitates the organisation of a press censorship in this country. Under the present circumstances the courts of justice on the publication of seditious matter in a paper can rule whether it should not cease to exist, but, as pointed out above, the court's decision is hampered by legal technicalities of an intricate nature. The formation of a committee of press censors should act as a wholesome control on cheap and nasty journals. So much for the third department.

9 But the last department of the society of sedition, *viz*, the spiritual has not been hitherto paid any attention to.

10 That Hindus and for the matter of that all oriental peoples are swayed more by religion than by anything else is quite patent to the party of sedition as it is to the Government themselves. The latter have hitherto adopted, and rightly adopted the policy of allowing the different communities perfect freedom in the matter of their religious beliefs. So much so that even public nuisances have been tolerated if committed by any

section in the name of religion. As an example in point, the feeling of tenderness to animal life, even vermin life, shown by Jains and some Hindus has been respected by Government to such an extent that they refrain from enforcing the destruction of rats recommended by eminent medical authorities as a preventive measure against plague. Perhaps so far the Government have been acting wisely, but when it is noticed that seditious are seeking to connect their anarchical movement with religion, and the political Sadhu is abroad, it is high time to change the policy of non-interference in so-called religious affairs.

11. In the name of religion the Thugs murdered the innocent people, but Government was not deterred from exterminating thuggism from their anxiety not to interfere with so-called religious beliefs. Sati also has been abolished, though it had been practised under the sanction of religious books.

12. The new religion which is being now preached by so-called religious associations under the pretence of reviving old religions is nothing but the cult of the swadeshi, the adoration of the motherland, self-respect, worship of heroes like Shivaji, and the doctrine of India for the Indians only.

13. It pains me to write as above, but already religion has played a prominent part in this matter, for religious books were found in almost every search made for weapons and bombs. The rôle of the priest or the Sadhu is most convenient, and rulers have bowed and do bow to religious preachers. These people generally distort the real import of religious precepts and thereby vitiate the public mind. The founders are sly enough to flatter the Government by an occasional address breathing loyalty and friendship, but it is essential to check this sudden growth of piety and religious propaganda.

14. These are my views of the present state of affairs. I have expressed them freely.

15. To recapitulate, then, we must watch suspicious characters and not allow them to enter our States and combine in circulating information about the movements of such people. We must exercise due care in the selection of at least the heads of the educational institutions, schools and colleges. In the absence of censorship the Native States must prohibit the circulation in their territories of the papers whose one object is to decry everything British. We must view with suspicion any sudden growth of religious activity and we must set a good example by publicly expressing our horror of seditious and anarchical movements, and this is the duty we owe to the British Government who have secured to us our possession of the States we rule over.

(11) From His Highness the Maharaja of Kishangarh, dated the 17th October 1909

After compliments—I write to acknowledge the receipt of Your Excellency's Kharita, dated Simla, the 6th August 1909, which was delivered to me by the Resident, Colonel Showers, on the 24th ultimo. The subject is not quite new to me, as I have been watching during the last two years, with great concern, the trend of events in British India. The campaign of vilification and calumny directed ungratefully against the Paramount Power and its officers, whose sole object is India's peace and prosperity, has been

for a long time prosecuted by professional libellers whose wicked industry has been aided by the intrigues of a few disappointed and over-ambitious, young men. The evil has spread, it has infected certain Native States and recent events of violence and lawlessness such as have shocked humanity, go to show that the party of sedition has not yet slackened its efforts, much less abandoned them. The Ruling Princes of India, even more than the Paramount Power, are interested in stamping out the evil, and no one is better supplied with weapons than they to scatter and defeat the forces of anarchy should they make appearance within their dominions.

I feel quite flattered in being asked to co-operate with the Paramount Power in fighting a common enemy, and I take this occasion to assure Your Excellency that no sacrifice will be deemed by me too great to make in the interests of the Government, whose protection and friendship my State has uninterruptedly enjoyed for nearly a century.

As regards the present position of affairs in my State, I fully believe that it is absolutely free so far from the taint of sedition, such as I have described above, and that the propagators of anarchical doctrines have never thought it safe to direct their mischievous activities in any part of my territory. I do not apprehend that any of my subjects will ever be tempted into the criminal folly of entertaining feelings of disaffection and ill-will against the British Government, but what I do fear is that the malignant insanity which has affected certain sections of the community in British India will, if not checked at its source, continue to spread through the land, and some of my peaceful subjects may unwittingly be involved in the mischief. It is also probable that evil-minded persons finding their actions watched in British India may take advantage of our less efficient police systems, and make use of our territory as centres from which to carry on their campaign against the Government. I need not say I shall do all in my power to prevent this happening, but at the same time if I may say so, it is at an earlier stage that the mischief should be checked, *viz.*, before it has had time to spread beyond British India.

I am aware that much of the anarchical propaganda is diffused under the seductive name of religion, and hence in a great measure the difficulty of detecting crime of this kind. I entirely concur with Your Excellency that rather than wait for the advent of the evil, it would be wise to concert measures in time for its prevention. I have directed my Council to include in the schedule of offences all acts and omissions which have been made penal in British India under the Explosive Substances Act, 1908, the Newspaper (Incitement to Offences) Act, 1908, the Prevention of Seditious Meetings Act, 1907. Offences of this nature will be considered equally penal whether committed or intended to be committed in Kishangarh or British India. The procedure, which I propose adopting with respect to such seditious cases that may come to light, is that all trials will be held in a summary way, by the Court in my State that can pass the highest sentences, and that all sentences passed will be final, subject only to my confirmation. I cannot but think that long drawn-out trials in such cases are an encouragement to, rather than a deterrent against, the continuance of these offences. I will further order that it will be obligatory upon every subject of mine to give forthwith to the nearest Magistrate or Police Officer information of the commission or intention to commit any of the offences alluded to above, whether in Kishangarh territory or British India. Any one withholding information will be seriously dealt with, so also any one

harbouring or screening an offender of this class, whether he be my subject or not

To make my views universally known, I also propose issuing a proclamation on the occasion of the Dasehra, when all my nobles and high officials will be assembled. I will then emphatically proclaim my utmost abhorrence and detestation of the vile deeds recently enacted in British India and England, and I will exhort my subjects to help me in keeping out of my territory the enemies of the British Government under whose aegis I am enabled to maintain a just and prosperous rule in the State.

In circulating information and watching suspicious characters, I am willing to co-operate with the British Government in any way it may be desired and I will now take, moreover, a personal interest in the matter, and be ready both in this and any other matter that may arise to devote my utmost endeavours to the assistance of the Paramount Power.

Thanking Your Excellency again for consulting me

(12) From His Highness the Maharana of Udaipur, Mewar, dated the 9th October 1909

After compliments.—I write to acknowledge, with thanks, the receipt of Your Excellency's Kharita of the 6th August, asking my advice as regards measures to be adopted in connection with the mischievous efforts of some seditious people working in certain parts of British India with a view to create disquietude in the peaceful administration of the British Government and to spread their malevolent influence in other quarters as well. I deeply regret that those ill-advised people, under disguise of doing good to their country, have created an agitation which is detrimental to all good government and social administration. I believe, and every one will agree with me, that those mischievous people are suicidal in their attempts and will bring ruin on themselves.

It is a great disgrace to their name as also their religious beliefs that in spite of the great prosperity India has been enjoying under the British regime, those people are acting in such an ungrateful way. I also endorse the opinion that such seditious attempts must be nipped in the bud, and measures adopted by the British Government were undoubtedly expedient on the occasion to preserve the peace of the country.

All Rulers of Native States should heartily co-operate in guarding their respective subjects from mixing with those ill-advised people, who devise such hateful conspiracies and agitations, and they should try their best to realise the wishes of the Government of India on this occasion, nor should they allow such agitations to spread in their respective territories.

I am, however, glad to declare that in my territory there is no sign of any seditious movement at the present moment, and I hope there will be none in the future too. As this State of Mewar always desires the welfare of the British Government, its subjects will ever remain loyal, and will always try to undo the efforts of the agitators against the British Government. In case I discern any signs of such movements, I shall at once adopt strong measures to suppress them. I have, with a view to warn my subjects, already issued a proclamation to the effect that they should not be misled by the wicked advice of mischievous agitators against the British Government.

I conclude, I desire to express the high consideration which I entertain for Your Excellency

(13) From His Highness the Maharaja of Jammu and Kashmir, dated the 28th October 1909

After compliments—I have much pleasure in acknowledging the receipt of Your Excellency's Khairat, dated the 6th August 1909, conveying Your Excellency's warm approval of my humble efforts in connection with suppression of feelings of sedition and unrest that have, unfortunately, for some time past, been prevailing in certain parts of the Indian Empire.

I am extremely glad to be able to tell Your Excellency that, with the exception of one solitary instance which, as Your Excellency is perhaps aware, was dealt with with the utmost promptitude possible, there has been no sign of any unrest or disaffection in my territories, and I think I can safely give Your Excellency my sincerest assurance that my subjects, faithful to the traditions of the past, entertain sentiments of profound loyalty and devotion to the Paramount Power. It is a matter of no less gratification to me to add, for Your Excellency's information, that those feelings of loyalty and devotion which both the ruling family and its subjects have cherished as a sacred trust since the State was recruited under the aegis of the British Raj have been strengthened by the notification which, Your Excellency is aware, I took care to issue in 1907 as a precautionary measure impressing upon my people in the strongest and clearest terms possible that all feelings of anarchy and sedition are ruinous to the peace of the country, and as such are looked upon by me with the deepest abhorrence and detestation.

I need hardly submit to Your Excellency that, being fully alive to the patent fact that it is of vital importance alike to the Paramount Power and its feudatories to co-operate in preserving peace and order in the empire, I have, since the first appearance of the signs of disaffection and discontent among certain perverted and irresponsible people in British India, not only kept a most watchful eye on my subjects, but have thought it fit to adopt stringent measures to keep undesirable and suspicious characters out of my State and to otherwise guard against any possible dissemination of any seditious ideas among my people.

While heartily thanking Your Excellency for the honour done me by kindly giving me an opportunity to express my opinion on the delicate and vexed question of how to suppress unrest and sedition in Native States generally, I venture to state that, so far as I am aware, the few incidents of a seditious character that might come to notice in some of the Native States are by no means of local origin, being entirely traceable to outside evil influence. I for one, am firmly convinced of the staunch and unshaken loyalty and devotion of the Indian Chiefs and their subjects, and think that seditious movements or anything inimical to the interest of the British Raj can find no footing there. But in view of the fact that dangerous elements may enter State territory secretly and unobserved and corrupt popular minds, if proper watch is not kept on arrivals of such elements from outside, I consider that the Chiefs should exert their personal influence on their subjects to prevent their imbibing poisonous ideas of sedition and anarchy and should put down promptly and with a strong hand the least symptom of demonstration that can even be remotely connected with sedition.

and unrest; that secret and vigilant watch should be kept on the movements of irresponsible and suspicious persons visiting the State territories, that circulation of disloyal and inflammatory literature should altogether be put a stop to, and that last, though not the least, particular care should be taken to see that teachers and professors of schools and colleges in the several States are men of high religious and moral principles, free from any doubtful political views and ideals, so that the rising generation, under their care, may grow to be perfectly loyal and faithful citizens of the British Empire.

But to give a practical shape to these and similar other allied matters and to achieve the best results, it is essential, I think for the Chief to mutually co-operate and to have opportunities of freely exchanging their views with one another. Considering the peculiar nature of the case, this seems to me to be the most suitable means by which prompt and effective measures could be taken to deal with the situation.

As regards the question as to how the desired co-operation may be effected, I leave the matter to Your Excellency's deliberation and wise judgment. I shall anxiously await Your Excellency's advice before I take any further action in the matter.

(14) From His Highness the Maharaj Rana of Dholpur, dated the 30th October 1909.

After compliments.—Your Excellency's esteemed Kharita of the 6th August regarding the endeavours of the persons who are trying to spread sedition in British India, as well as in certain Native States, was duly received by me. I hasten to thank Your Excellency most cordially for the timely advice and warning conveyed therein. I am quite alive to the fact that the welfare of the Paramount Power is the welfare of the Native States.

Although no signs whatsoever of the mischievous activities of the sedition-mongers have yet been discovered in my State, I have always been wide awake in this connection, and the State authorities are under instructions to be very vigilant and to be on the watch as regards the movements of any suspicious characters. Moreover, with a view to dealing promptly with any case of sedition that may occur in the future, as well as to minimising any chances of such an emergency arising, I have issued certain orders, a copy of which is herewith enclosed for favour of Your Excellency's perusal.

I feel highly honoured at Your Excellency asking my humble advice in the matter.

My humble opinion is as follows —

- (a) A regular system of exchanging information between the Native States and the British Police should be established, and whenever necessary these reports regarding the movements of seditious characters should be made by telegram.
- (b) All the newspapers likely to publish seditious articles should be severely censored, &c more than they are now.

HIS HIGHNESS THE MAHARAJA OF JODHPUR

- (c) I have been observing carefully the judgment passed on persons who have been convicted of sedition, and in my humble opinion they have all been too leniently dealt with.

I assure Your Excellency that my State will always be at Your Excellency's service and we will spill our blood if need be.

Any order or advice that Your Excellency may be pleased to favour us with will be received with due respect

- (15) From His Highness the Maharaja of Rewah, dated the 2nd November 1909,

After compliments — I am much obliged for Your Excellency's Kharita of the 6th August last and for the compliment paid in consulting me about a matter, which, as Your Excellency remarks, is one in which the interests of the Paramount Power and Ruling Princes of India are identical

2 I learn from newspapers that the seditionists have endeavoured to gain a footing in certain Native States, but I believe they have been foiled. I am glad to say that there has been no trouble in my State. My people are loyal and I have heard of no attempts being made in that nefarious direction in my territories. Should any steps be necessary executive or legal action can be taken by me at once, and I wish to assure Your Excellency that the Rewah Durbar will always most gladly co-operate with the officers of Your Excellency's Government in the suppression of the seditious propaganda and political crime. I have warned my chief officers in the districts and at the head-quarters to keep a careful watch over suspicious characters so that action may be taken here, if necessary, or information circulated to Government officers in British India.

3. Thanking Your Excellency for the very kind offer of assistance.

- (16) From His Highness the Maharaja of Jodhpur, dated the 3rd November 1909

After compliments — I beg to acknowledge with many thanks the receipt of Your Excellency's kind Kharita, dated the 6th August last

2 I have been watching with much concern the movement set up by sedition-mongers in certain Native States, but as regards Marwar, it is needless for me to assure Your Excellency that they will be given no quarter.

3. At present their *modus operandi* seems to be—

- (1) the criminal use of explosives,
- (2) the preaching of sedition,
- (3) the dissemination of seditious writings, whether by leaflets, pamphlets or periodicals, and
- (4) malevolent criticism of the actions of the Supreme Government

4. With regards to (1), I have already taken the necessary steps by promulgating an Explosive Act in May last. It is my sincere belief that the stern attitude adopted by the Durbar will hardly afford any one the opportunity of creating a depot for, or of keeping or using any explosives in this country, or of finding shelter in Marwar after they have been guilty of any of

the offences included under the said Act To place matters on a constitutional basis, I am, with the entire concurrence of my noble and peoples, passing an Act making actions falling under categories (2), (3) and (4) penal, and I take this opportunity of submitting a copy of the same for Your Excellency's information

5 I would at the same time ask Your Excellency's Government to include offences under sub-heads (2), (3) and (4) in article 5 of our Extradition Treaty,

6. For offences that are likely to fall under sections 3, 8, and 9 of my Act, I would feel obliged, as Your Excellency has fore-shadowed in the 2nd paragraph of Your Excellency's Kharita, if the Criminal Intelligence Department be ordered to furnish my Durbar with such information as may enable them to watch suspicious characters and to stop the circulation of seditious writings

7 This Durbar has ever been and shall always be ready to co-operate with the Supreme Government in any measure calculated to strengthen and consolidate the British Empire and to arrest and eradicate seditious movements

8 It shall ever be my pleasant duty to do my best in concerting measures against the enemy of the British Empire, whom I consider as my personal enemy

(17) From His Highness the Maharaja of Mysore, dated the 11th November 1909.

After compliments —In acknowledging the receipt of Your Excellency's Kharita of the 6th August last, I desire to express my appreciation of the confidence which Your Excellency has reposed in me by writing so frankly and fully on the subject of "Sedition in the Native States of India" The question is one which has been the subject of anxious consideration on my part, and I can assure Your Excellency that I shall never relax my efforts to prevent the nefarious doctrines of sedition from taking root in Mysore I welcome the opportunity which Your Excellency has given me of expressing my opinions on the subject with a view to our mutually co-operating against a common danger

It is, as Your Excellency points out, impossible to contemplate the adoption of any general rules or general course of action, and I trust therefore that Your Excellency will be satisfied with a general assurance on my part that I am resolved to deal promptly and rigorously with anarchy and sedition in whatever shape it may present itself within the borders of my State No preacher of seditious doctrines shall be permitted to poison the minds of my subjects, and I shall promptly repress any attempt to sow the seeds of sedition either by prosecuting the offending individual under the criminal law or by expelling him from my dominions My own magistracy and police are on the alert to discover and report the advent of all seditious preachers, and I shall, if necessary, issue renewed and stringent orders on the subject It is not, however, sufficient in my opinion for the Ruler of a Native State to merely discountenance the open preaching of sedition, for I hold that every Ruling Chief is bound to let it be clearly understood that he will view with strong displeasure any person, however high his rank and however valuable his public services, who in any way associates himself with doctrines which have produced the well known extremist party in British India.

I shall not hesitate to express my reprobation of the entertainment of extremist views whenever an occasion should arise

As regards seditious writings in the newspapers, I have armed myself by means of the Mysore Newspaper Regulation with ample and unrestricted powers to prevent the circulation, through the press, of anarchical and seditious propaganda among my subjects. I venture to observe in this connection that the distinguishing feature of the above Regulation is the complete power which it gives to the Executive Government of my State to deal with the evil against which the Regulation is aimed. From my point of view it seems a cardinal error in a country like India to tie the hands of the executive in dealing with the seditious press and to allow the tedious, cumbersome and expensive machinery of the Courts of Law to decide the question of fact whether or not a particular newspaper is seditious and should be suppressed. It is, I consider, essential that the executive Government should have a free hand to deal promptly and vigorously with seditious journalism without any interference from the Courts of Law, and I earnestly commend this prominent feature of the Mysore Regulation to Your Excellency's consideration. I may conclude this portion of my argument by assuring Your Excellency that I have found this Regulation a most useful and efficacious weapon against sedition. The attacks which have been made in the press upon the legislation in question have caused me no concern, for I feel that it is only the actual evil-doers who will be affected by the new law and that no really loyal subject need apprehend that his legitimate rights will be in any measure curtailed thereby. I am convinced that the Regulation was a wise and most necessary measure and I have no intention of modifying it.

Your Excellency refers in the second paragraph of the letter under reply to a necessity that may possibly arise for the Indian Princes to combine with the Government of India in some matters such as circulating information and the surveillance of individuals suspected of sedition. On this point I need hardly say that I should give my most careful consideration to any further suggestions that it may occur to Your Excellency's Government to make to me. I myself contemplate introducing on British Indian lines a more careful supervision over the publications of the vernacular press of my province by means of periodical extracts translated from the various newspapers and printed for circulation among the principal officers of the magistracy and police.

In conclusion, I may fairly claim for my own people that they have always retained a vivid recollection of the many benefits which Mysore has received from British rule. With the exception of an ebullition on the part of the local press (the handiwork of a very small and irresponsible section of the educated classes among my subjects influenced by wild utterances of their brethren elsewhere), which was met and promptly suppressed by the enactment of the newspaper Regulation, I can confidently assert that there are no more loyal subjects of His Majesty in India than the people of Mysore. Anarchy and sedition have so far never taken root in my dominions, and I venture to say that universal feeling among my subjects is one of friendliness, gratitude and loyalty towards the Paramount Power. It is my fervent prayer that this sentiment may long continue,

I deeply appreciate the feeling of consideration for myself to which Your Excellency has given expression. I take this opportunity to express on my part the great regard which I feel for Your Excellency, and with feelings of high consideration and respect I beg to subscribe myself,

(18) From His Highness the Maharaja of Baroda, dated the 19th November 1909.

After compliments—I have had the pleasure of receiving, by the hands of my friend Mr Bosanquet, Your Excellency's esteemed Kharita, dated the 6th August last, conveying a warning that seditious people are endeavouring to establish their evil doctrines and practices in the Native States of India, and seeking my counsel as to how we can best assist one another in stamping out the common enemy

2 I am deeply concerned to find that a new element has unfortunately been introduced into the country which not only aims at the embarrassment of the British administration, but works openly or covertly against the constituted order of society.

3 The extent to which sedition has actually spread in Native States is not known to me. I was anxious to inform myself more fully on this subject, and to know the condition of affairs in other States generally, before replying to Your Excellency's Kharita. I was informed, however, through the Resident that such information could not be communicated, and I was referred to such reports as had appeared in newspapers. Judging from these reports there has been trouble only in one or two States, and I trust and hope that the evil will not spread any further.

4, Your Excellency rightly observes that the interests of the Ruling Princes and the Paramount Power are identical, and I fully agree with Your Excellency in thinking that much good may result from a full, frank and friendly discussion on this grave question. It is obviously the duty of every Government to stamp out the forces which make for anarchy and sedition,

5. Since receipt of Your Excellency's Kharita I have obtained full information from my Police Department, and have also caused a Note to be drawn up by my Minister, with regard to the influence which itinerant men, mostly from British territory, have sought to exert on my State, and the precautions which have been taken. Copy of a Memorandum prepared for my information by my Minister is enclosed for the information of your Government. The subject receives the continuous attention of my officers, and such measures as may be considered needful from time to time will be adopted in the future.

6. I conclude by assuring Your Excellency that I am deeply conscious of my own responsibility in preserving peace and tranquillity in my State. I shall welcome any opportunities for a close consultation in these matters with your Government, whenever necessary, and I shall ever be ready to cordially respond to any reasonable call for co-operation and assistance in repressing anarchy and sedition.

7 With an expression of the high consideration I entertain for Your Excellency, &c

Minister's Note

Itinerant lecturers from outside occasionally visit the State of Baroda with the object of preaching reformation, or greater devotion to religion, or the encouragement of goods of Indian manufacture, &c. In course of these lectures, which are themselves harmless doctrines are sometimes introduced which are objectionable. The Police have instructions to be watchful, and take the necessary action in such cases.

2 It appears that in the course of 18 months from the beginning of the year 1908, there were some thirty visitors mostly from British India whose movements were watched by the Police. Most of them were harmless lecturers who spoke on the Swadeshi movement, on unity between Hindus and Muhammadans, on the preservation of cows, on industries, on export of grain, on national education and physical culture, on the four stages of life and on caste, on the caste rights of goldsmiths and blacksmiths, on the Hindu, Muhammadan, Christian and Buddhist religions, on Indians in South Africa on the Vedas and the Vedic religion, and on similar subjects. A few of these visitors spoke on subjects of a distinctly political character or in a tone which was inflammatory, they were all watched, and soon left the State. In some other cases, the subject of the proposed lectures was the Swadeshi movement, but as the speakers were known to be political agitators, no meetings were permitted to be held.

3 Within the last few years the Residency also brought to the notice of this Government a number of cases in which itinerant preachers from outside entered the State with the object of disseminating their views and doctrines among the people. His Highness's Government have responded to these friendly communications in every instance, have supplied information when information was asked for, have made enquiries and have taken the necessary action when any action was called for.

4 Newspapers in this State which are in their infancy, and generally unformed, at times write articles in connection with these movements. Whenever anything of an objectionable character is published in them, the editors concerned are sent for and reprimanded and in one recent case the editor publicly apologised for his indiscreet writings. The Rules relating to Printing Presses and Newspapers in the State, framed many years ago, have recently been revised in view of the present state of political unrest in some parts of British India, and the question of a further revision, if need be, is always before the eyes of the Government.

5 Teachers and pupils of the several educational institutions in the State have hitherto held themselves aloof from associating themselves with political movements, and taking any part in organising and carrying on political agitation. The principles laid down by the Government of India in 1907 with the object of protecting higher education in India from this danger, were communicated to His Highness's Government by the Resident, and all the educational authorities in the State have been instructed to bear them in mind, and act up to the spirit of the same.

6 The Police of the State have instructions to be vigilant, and to bring promptly to notice all matters relating to seditious movements. The machinery for obtaining information has recently been reorganised. And with a view to arm the Police with more effective powers for the purpose of prevention, an amendment of the Police Act is now under consideration.

BARODA
The 31st October 1909.

ROMESH DUTT,
Deewan.

19) From His Highness the Maharaja Scindia of Gwalior, dated the 3rd December 1909.

After compliments—I have been much honoured and gratified by receiving Your Excellency's gracious letter of 6th August appreciating my action in the matter of sedition, and I am grateful for the confidence reposed in me by asking for my advice as to the best way of keeping sedition out of Native States generally.

2 The question is undoubtedly a grave one, affecting as it does the future well-being of India. Therefore I feel it particularly behoves those who preside over the destinies of people and have large personal stakes, to do all in their power, to grapple with it vigorously till they have solved it satisfactorily.

3 The gravity of the question is only equalled, if not surpassed, by its delicacy, at least in the aspect in which Your Excellency has asked me to approach it.

4. I shall try to give my opinion frankly according to my lights and experience.

5 Whatever proportions sedition may have assumed in the country at large, including the Native States, I make no doubt that the personal loyalty of the Rulers of Native States to the British Throne remains and will always remain unshaken and above suspicion and also that they all desire peace, contentment and prosperity to reign in the land. And their loyalty is only natural, as they cannot but realise that the permanent paramountcy of the British Government is an indispensable condition of their own existence and prosperity.

6 These sentiments of Native Chiefs cannot but be reflected in their administrations and cannot fail to permeate to the humblest of their subjects by a natural process. I cannot therefore help thinking that in Native States at any rate, the number of people entertaining questionable feelings towards the British Government must be infinitesimal, and such feelings wherever they exist must be entirely the product of extraneous influences.

7. The problem, therefore, is :—

- (1) How to prevent the importation into the Natives States of ideas and feelings not in accord with their traditions, and
- (2) The eradication of those ideas and the punishment of persons guilty of holding them, if they have found their way in unnoticed.

8 A suitable amendment or extension of the Criminal Law bearing on seditious movements should be introduced wherever necessary.

9 Even more effective than the above, would be the formation of "Vigilance Committees" composed of leaders of different communities who are also men of staunch convictions and are earnest supporters of law and order. These I now propose forming in my own State and ranging them on the side of the Durbar for the purpose of inculcating in all, by precept and example, a sense of the futility and wickedness of brewing disorder and anarchy and the wisdom of pursuing healthy avocations and profitable callings. These committees might also usefully serve as mediums for bringing to the notice of the Durbar, cases which may baffle their own private efforts.

10 Along with this, special care should be taken to see that the best possible influences are brought to bear upon the students of schools and colleges and that all engaged in the profession of teaching take every possible opportunity of instilling correct notions into the minds of their pupils.

11. These steps supplemented by a public avowal of the convictions and policy of the Rulers, on the subject of sedition, whether in the form of messages to their subjects or any other form, couched in unmistakable terms should go a long way towards keeping the people aloof from any proceeding designed to embarrass or weaken the authority of the British Government.

As an instance of the salutary effect of such an appeal or proclamation, I may cite the action taken by me at the last Smghastha Fair in Ujjain which had brought together some 6 lakhs of people of all grades and shades of opinion from all parts of the country.

12 The last point I would touch upon is the importation of seditious literature into the Native States. In regard to that, the Native States are practically helpless as the evil has to be checked at its source and this can only be done by the Government.

13 To show what measures I have adopted and how the foregoing suggestions could be given effect to, I beg to forward, for Your Excellency's perusal, copies of certain papers one of which has, I believe, been already brought to Your Excellency's notice.

(20) From His Highness the Maharaja of Bikaner, dated the 29th December 1909.

After compliments—I beg to gratefully acknowledge receipt of Your Excellency's kind Kharita of the 6th August 1909, and to tender my sincere apologies for the great delay in replying to the same, which I greatly regret and which has been due to a combination of circumstances and chiefly to domestic anxieties and trouble, which, as Your Excellency is aware, culminated in the lamentable death of my mother, and for the same reasons I beg that Your Excellency will be kind enough to forgive me.

Your Excellency's consulting the Ruling Princes and Chiefs of India on such a subject has, I feel sure, not only honoured and gratified them, but has also, I would venture to add, given another proof—not that one was wanted—of the sincere friendship which Your Excellency evinces for, and the genuine interest Your Excellency takes in, the Protected States of India and their Rulers, and of Your Excellency's solicitude that as "Pillars of the Empire" they should take their proper place and share the responsibilities and anxieties of the Supreme Government, and it is my humble belief that such steps are bound to result in good both to the Imperial Government and to the States themselves.

I am sure that no one can but realise that the movement of the party of sedition is, as Your Excellency remarks, directed not only against the British Government but against all constituted forms of government and the established order of society and that the matter is one in which the interests of the Paramount power and the Ruling Princes of India are identical, and I think it can confidently be expected that Your Excellency will find—and no doubt has already found—that the Ruling Chiefs of India will, as in the past, vigorously rank themselves on the side of the Government which is also that of law and order. Already several instances are forthcoming of the staunch loyalty of the Chiefs and of their stepping forth in no hesitating manner and doing their utmost to co-operate with the Government, where seditionists have been tried and brought to book or substantial measures and precautions have been

taken to prevent their States and subjects from getting infected by this most objectionable movement

And there is every reason why this should be so—from whichever point of view the matter may be looked at I would beg Your Excellency to believe that apart from interests being identical, there is a marked degree of true loyalty and genuine devotion towards their Sovereign on the part of the Chiefs, and that that is very real in spite of the scepticism of certain ill-informed and ignorant persons who affirm it to be based on mere selfish motives and worldly considerations Our Hindu religion—and no doubt the Muhammadan religion as well—teaches us this; indeed it is one of its first principles, and history bears testimony to my assertion even as regards the past and under Sovereigns and Governments that contrast strangely and very differently to our present King-Emperor and His Majesty's Government out here Motives of self-preservation also, looking at it from the worldly point of view, necessitate our energetic co-operation with the Government in this direction and we are also bound by our Treaties to do so

It is difficult to suggest for British India anything more than what has already been, and is being, done to stamp out or check the spread of this curse where—if I may be permitted to say so—all sensible persons and those who have a stake in the country have watched with genuine admiration and lively gratification the far-seeing and statesmanlike policy adopted by Your Excellency by which while firmly and with a strong hand suppressing anarchy and sedition—which was so necessary—Your Excellency nevertheless declined to bring in such repressive measure as might punish and bear harshly on the innocent and loyal millions of India and I would further venture to join in voicing the expressions of the general opinion of such persons that any other method of coping with the critical situation through which we have just passed any show of weakness on the part of the Government, any undue or harsh repressive or coercive measures—so suicidally advocated by those who ill-judged the present times and who failed to realise the real gravity of the consequences of the policy they advocated—anything likely to have been interpreted as a breach of faith on the part of the Government of India, or any deviation from the right and honourable path of duty in satisfying the legitimate aspirations of the peoples of India—to which end the Government of India had themselves, in their self-imposed task of humanity, trained them and which end appears to have been well served by the introduction of the recent reforms—any such measures might easily have ended in the most serious results and consequences affecting not only India but the Empire as a whole—a situation, the dealing with which would not have been in the hands of the ill-advised and irresponsible persons who advocated a different policy, but which would have landed the Government of India and His Majesty's Government in England into an extremely difficult and awkward position In short, so long as the Government of India adhere to the present policy of dealing firmly and promptly with all seditionists and seditious movements, and at the same time tempering it with kindness and parental solicitude for the loyalists and the innocent, and even magnanimously showing mercy in deserving cases, there ought to be and can be no cause for any anxiety in any way, even though as Your Excellency remarked in a recent speech there are still rocks and shoals ahead

The only other step that seems to be called for at the present moment is some measure to put a muzzle on that portion of the venomous press in

India which does so much harm and which is to a great extent responsible for all the serious unrest and violent crimes in India

As for the Protected States, apart from what has already been done by many States and what doubtless is being, and will be done by the remaining in the way of practical measures, a few suggestions occur to me which, with great diffidence, I beg to offer to Your Excellency for what they may be worth, and before doing so, the remark on my part seems hardly to be called for to the effect that any matters connected with the States and their Rulers must, of necessity, have a personal bearing for myself also, but I hope Your Excellency will believe that it is for no unworthy selfish motives—though self-interest naturally with all human beings must always be a consideration—that I propose bringing them forward here, but I do so because I feel that it is my duty, in accordance with one of my essential principles of respectfully yet clearly and frankly putting forward my views and suggestions and I honestly believe that, in the event of these proposals being seriously and, as I hope, favourably considered by Your Excellency, they cannot but result in substantial advantage to all concerned and will go a long way towards bringing about a better state of affairs

1 It is the universal experience of every one who has had anything to do with our States that no person, whether an official, or a noble, or a private gentleman, can render any signal or real useful services to the State or its Ruler or come to wield any beneficial influence of any importance unless his prestige and position is placed on a high pedestal so to speak and this is greatly influenced according to the consideration and support given to him by the Ruler of the State and his Durbar I believe I am not going against the general consensus of opinion entitled to any weight when I say that as in the past as well as in recent times, so in the future also, in all times of stress and storm, the Ruling Princes and Chiefs are destined to play a prominent and honourable part in the history of the British Empire in India It is true that loud protestations of loyalty shouted from house tops are of no value—perhaps this has been too much overdone already by certain interested communities to permit of much reliance being placed on them—but Your Excellency will be the first to realize that the loyalty of my community—the Ruling Chiefs—which has stood the severe tests of the Mutiny and all these years is not a hollow sham but something that is genuine and real and, should the time come again, it can confidently be asserted that we can be depended upon and we shall give further proofs by deeds and not by words alone In ordinary times or those intermediate periods like the present, we have it in our power, and we consider it a privilege, to render in our own States our dutiful help to the Government of His Majesty the King Emperor in India But I have often felt that we might make ourselves further useful, did circumstances permit, or were we placed in the position, of being able to render some services in British India also One often notices cries in the papers and elsewhere for influential and responsible people coming forward and doing something more than mere talking in support of the Government and denouncing disloyal movements and seditionists and, if my memory serves me right, some feeble attempts have, at times, been made, since the disturbing element made itself visible above the surface in India, to constitute Societies and Bodies of Ruling Chiefs and Territorial Magnates, &c., to co-operate with Government and by tours, speeches, &c., to remove

the misrepresentations deliberately spread about the Government and to disillusion the people from the deception practised by, and to expose the base motives and real character of, the agitators and seditionists. But after the first announcement, one never hears anything more about such leagues and societies, and the good they could have done, or are doing, must, it is feared, be very limited indeed. Thanks to the education and training imparted to our younger generation of Chiefs we are beginning to look beyond our hitherto limited spheres and take due and real interest in the affairs of the Empire, and some of us will no doubt be found who would desire to take a more active—personal as apart from official—part in the attempt to co-operate with Government and like the big men in England who—not necessarily forming part of the Government—discharge their public duties, would also like to see whether we could not do something useful by going about British India addressing audiences, speaking to people, etc. and by all other practical means attempt to destroy the seeds of poison sown by seditionists and agitators and to counteract their baneful influence. In short, instead of our merely acting, as hitherto on the *defensive* we would now like to embark on an *offensive* campaign. Whether any success would attend this, no one can really say till the experiment has actually been tried.

But as in the Protected States, so in British India—and perhaps even more so in these democratic days of socialistic tendencies—no one could wield any wholesome influence unless he is looked upon as a person of importance and command the respect due to his position and befitting his rank. Although—I believe I am right in saying—it is a fact that the majority of the people in British India are, on the whole, favourably disposed and sympathetically inclined towards us, it is perhaps only to be expected that the significant minority of the disloyalists and agitators—who do not love my community—do all in their power to belittle our worth and importance and attempt to set popular feeling against us, by hook or by crook, and to hold us up to ridicule. The correctness of this assertion would, I venture to say be corroborated by the storm and outcry that is invariably raised and all the things that are said about, as well as the epithets that are applied to us, in certain newspapers whenever any one of my community writes or does anything in support of the Government or against the propaganda of agitation, sedition and disloyalty.

I have no hesitation in saying that all the Chiefs gratefully realize that under the ægis of Your Excellency's rule, a very great deal has already been done to help them and their Durbars, and to smooth over difficulties and matters of a nature which caused them inconvenience and anxiety. But in spite of that perhaps my community are too sensitive and perhaps we are wrong, yet, whatever it may be, the fact remains that the feeling is that, for diverse reasons of several years' standing which it would be as unnecessary as it is out of place to touch upon here, our dignity and importance has gradually diminished to some extent and that we do not now occupy the same position as we did some 40 to 50 years ago and we consequently feel that this fact, to a very large extent, detracts from our usefulness and lessens our influence and power of doing good and of our contributing our modest quota of help to the British Government in maintaining law and order and checking lawlessness and violence.

I firmly believe that all the Chiefs will join in the expression of the earnest hope—and doubtless the kind consideration, sympathy and regard

Your Excellency has already shown, as at the Agra Durbar in 1907, will encourage and embolden them to so hope—that, in spite of the heavy work entailed on Your Excellency consequent on the introduction of the reforms, not to speak of the very responsible duties of wielding the destinies of the Indian Empire with which you are at all times occupied, Your Excellency will be able to find time in the, alas!, very short period remaining of your term of Viceroyalty to look into the matter, and to, at least, lay the foundations in concrete of restoring the *Izzat* and position of the Chiefs to their former standard.

II The second point which I would respectfully bring forward for Your Excellency's favourable consideration is that according to present arrangements any person taking part even in the most violent or the most seditious movements against our States or their Rulers has only to go across into British India to enjoy perfect immunity and I am sure Your Excellency's Government would be still further putting the Chiefs and their Durbars under a debt of gratitude by the early consideration of the point as to whether or not such persons should be allowed to escape unpunished. Apart from the ordinary yet important considerations of the fact that any one hostile to any properly constituted government and one who is an enemy of all that counts for law and order should nowhere be able to find shelter, there would perhaps not be any two opinions about it that just as is the case that all such movements affecting the British Government and British India have both direct and indirect consequences for the Protected States, so exactly—though to a correspondingly smaller extent according to the lesser degree of our importance—such offences against the States and their Rulers must necessarily as a matter of course affect the British Government and British India also, and further a study of similar anarchical and nihilistic movements in other parts of the world leaves one little doubt for apprehending that the cult of the bomb at present directed mainly against officers of the Government of India in British India is bound in time to be directed against the Ruler of States as well as their own officers and looking ahead and keeping this in view, it seems to be most important and all the more urgently necessary that all persons guilty of sedition or any violent attempts against the States and their Rulers, of writing or publishing seditious articles, pamphlets, &c., or otherwise disseminating sedition in and against Native States and their Rulers should be liable to extradition and that they should not receive shelter in British India—whether such offences were committed in British India or the territories of the Protected States and may I be forgiven for respectfully pointing out that this would also be in conformity with the Treaties between the British Government and the majority of the States where the stipulation is put down in the very first Article that “the friends and enemies of one party shall be the friends and enemies of both parties”.

At present such offences are not included in the Extradition Treaties and even if extradition could not be arranged or sanctioned by Government it would seem to be desirable that at least the offenders should be duly dealt with in British India by the British Government. At any rate it could do nothing but good if either of these two alternatives were followed—preferably the former—and if it became widely known that no offenders and persons guilty of such serious offences would, any further, enjoy immunity either in British India or in the Native States—no matter whether such offences were committed against the Government or

the States and their Rulers; and possibly some such concerted action, leaving little loophole for mischief-making against either party, might tend to the earlier stamping out of anarchism and disloyalty

III It is extremely advisable that there should be unity of action as regards the exchange and circulation of information concerning suspicious characters as Your Excellency has suggested. Indeed this is a point that I had already taken up on my own account in April last. What appears to me to be urgently called for is that we should be in possession, *at the earliest possible opportunity*, of the particulars of all the movements and actions of not only seditious persons but societies, and specially the dangerous ones. If possible, it would be a very great facility if some measures were taken to enable us to be put in possession of all the facts, as soon as they are known at the Criminal Intelligence Bureau, through the Political authorities if time permits, or even direct, in cases of urgency—copies of such information being in due course sent to the local Political authorities also for their information. Besides British India, we are also ordinarily in complete ignorance of what is going on in our sister or even neighbouring States until we hear some time later from friends or see the announcement in the papers of discoveries or arrests or trials

Although a somewhat different subject, yet another matter has a close resemblance with the above. Owing to there being, so far as I am aware, no Press Cuttings Agency in India, it is difficult for us to come to know what is being said or written about us in different parts of India in the various English and Vernacular newspapers and in many cases, and for obvious reasons it is often very desirable that Chiefs and their Durbars should be fully posted about such comments, criticisms or attacks. Owing also to the diversity of languages and other difficulties it is practically impossible for them to collect or get hold of all such articles &c, or their translations. The knowledge of the criticisms and comments directed against the Government of India—many of which we know to be vilely unfair—would also be of advantage to us and possibly of some use to Government also, when as in some cases, we might be able to refute the same should it be within our power to do so and at the same time it would keep us acquainted with the state of the political atmosphere in British India.

As for what we have done in our State, Your Excellency is aware that we were the first State to pass an Explosive Substances Act in July 1908 and many months ago we issued confidential instructions to all local and district authorities. An Act forbidding the importation into, or the possession in, the State, of dangerous, seditious or disloyal papers including all such pamphlets, &c, is also about to be taken up and I have further under my consideration the question of stopping some of the really notorious and dangerous seditious and disloyal newspapers published in India from being brought or sent into my State. I am inclined to the view, in regard to the latter, that it is prudent to move cautiously in this matter and to exercise due discrimination between such papers and those which, though not of an altogether desirable tone are not the active organs of sedition and the prohibition of which might do more harm than good by magnifying their importance and creating suspicion where none may exist or otherwise producing prejudicial effects, and I have already taken steps in this direction and obtained particulars of such papers through the Political Agent, Bikaner.

I am happy to add for Your Excellency's information that, so far at any rate, my State and people are free from all infection of a seditious or disloyal nature against the British Government and, although prophecies are dangerous, I have every hope that they will remain strictly loyal to the end. For the future, I hope no assurances are necessary from me to the effect that I and my Durbar will ever do all in our power to co-operate with the Government and that, as in the past, we shall, as occasion demands, ceaselessly and vigilantly continue to take all such measures and precautions as may appear best suited to cope with the situation with due regard to local conditions.

Of the staunch loyalty of my House and our unstinted devotion to the person of His Majesty the King-Emperor, I need say nothing. It is proved by actual deeds in past history, it is a matter of great pride and pleasure to us that my ancestor Maharaja Sirdar Singhji was the only Chief in Rajputana to personally march from Bikaner at the head of his troops to render assistance to the British Government in the dark days of the Mutiny and I consider it a privilege and my great good fortune to have personally rendered services to my Sovereign on active service, and I would beg Your Excellency to always rely on and count upon us in all future emergencies.

In conclusion, I would again express the hope that Your Excellency will forgive my having taken up so much of your time, and with all good wishes, &c,

(21) From—His Highness the Nawab of Rampur, dated the 12th September 1909

To—His Honour the Lieutenant-Governor of the United Provinces of Agra and Oudh.

After compliments—I write to thank Your Honour for your kind letter of the 7th September from which I am very sorry to learn that the party of sedition and violence, so far from abandoning their seditious propaganda in British India, are trying to extend their baneful activities to Native States. Your Honour may rest assured that any assistance that I can give either in person or in any other way, will be freely and ungrudgingly given, because the traditional relations of this State with the British Government are those of the closest friendship and strictest loyalty, and the Treaties which have existed between the Government of His Most Gracious Majesty the King-Emperor and my House for so long bind me to that Government by ties of the deepest obligation and sincerest devotion. In this connection I may perhaps be permitted to recall the part my great-grandfather played in the troublous days of 1857 when he spared neither himself nor his subjects nor money in the cause of the British Government and in protecting Europeans.

While entirely agreeing with Your Honour that anarchism is a common enemy of the Paramount Power and the Indian Princes and also a menace to the established order of society I feel bound to say that apart from the fact that the danger is a common one I should ever deem it a privilege to place myself with all my resources at the disposal of the British Government,

I am happy to say that this State has so far been free from the influence of seditionists who would find it most difficult to get a foothold in Rampur, but if any attempt is made to seduce my subjects from their loyalty we shall be prepared to deal with the evil promptly.

I have carefully considered the subject matter of Your Honour's letter and have embodied my ideas with regard to it, in rough outline, in a memorandum enclosed herein. I should be glad to obtain the benefit of Your Honour's views on the points raised in the memorandum and to modify or add to them in a way agreeable to your wishes so as to give complete effect to the the part of co-operation in stamping out anarchy and sedition to which Your Honour has referred in the letter under reply

In conclusion, I am very glad to find that my letter of July 1908 has not been forgotten and that Your Honour has taken the earliest opportunity to give effect to the request contained in it This I regard as a token of confidence on the part of the British Government of which I am justly proud and for which pray accept my sincerest thanks.

(22) From—His Highness the Raja of Tehri, dated the 20th September 1908

To—His Honour the Lieutenant-Governor of the United Provinces of Agra and Oudh,

After compliments—Your Honour's note was delivered to me in due course No doubt the subject upon which Your Honour has been pleased to address me is a very important one, and I have given it due consideration. Fortunately in my State the propaganda of the anarchists may be said to be a thing unknown, nor is there any possibility of its ever taking roots in a soil so uncongenial to it as that of Tehri where loyalty to the throne has always been regarded as a part of religion. The proverb says "Qui se ressemblent s'assemblent." My people differ from the seditionists in their ideals, education, customs and manners that it becomes practically an impossibility for them to coalesce with each other. Nevertheless I quite agree that the time has come when some sort of measures should be taken, by the way of precaution, to remove any possibility of temptation being offered to the younger generation.

For the present I believe steps be taken first to prevent the circulation of seditious literature secondly, to keep the State free from the seditionists.

Should Your Honour be pleased to approve of the proposals I would suggest that the Post Office be required to keep the civil authorities informed of all the newspapers that come for circulation, and to withhold the delivery of those that may savour of sedition I am of opinion that no discrimination ought to be made between sedition under veil preached by indirect insinuations and sedition openly asserted, as sedition in any garb will always do the same mischief. Probably it may never become necessary to put in force the latter measure, as the majority of the educated people here are in the State service and we can use our influence to discourage seditious literature being read by them, without resorting to the other means, but I should like the Post Office to have such powers to deal (with) exceptional cases I would require the police in British territory to keep us confidentially informed of the movements of any seditionist who may

enter or wish to enter our territory. Directions will be issued to our police to remain alert but the information that may be received from outside will always be valuable. If a suspected seditious person enters our territory I would have him kept under surveillance, and if the suspicion against him be justified, I would have him turned out of the State. If however during his stay in our territory he committed anything which, if committed in British territory, would be regarded as an offence under the laws in force, I would have him tried and punished in the same way as if he were in British territory. A close watch would also be kept on persons with tendencies towards anarchism, no matter whether they be outsiders or the residents of the State. With such measures which I have briefly described above, I think, we can keep sedition out of my territory. If, however, Your Honour may consider it necessary to frame severer measures, I shall indeed be glad to carry them out.

With kindest regards, &c.

Extracts from speeches of Ruling Chiefs during the recent (1909) tour of His Excellency Lord Minto in Native States.

1. Extract from the speech of His Highness the Maharaja of Alwar at the State banquet on the 26th Oct 1909.
 2. Extract from the speech of His Highness the Maharaja of Jaipur at the State banquet on the 29th Oct 1909.
 3. Extract from the speech of His Highness the Maharana of Udaipur (Mewar) at the State banquet on the 3rd Nov 1909.
 4. Extract from the speech of His Highness the Maharaja Scindia of Gwalior at the State banquet on the 6th Nov 1909.
 5. Extract from the speech of Her Highness the Begum of Bhopal at the State banquet on the 11th Nov, 1909.
 6. Extract from the speech of His Highness the Maharaja of Baroda at the State banquet on the 15th Nov 1909.
 7. Extract from the speech of His Highness the Maharaja of Mysore at the State banquet on the 25th Nov 1909.
1. *Extract from the speech of His Highness the Maharaja of Alwar at the State banquet on the 26th October 1909*

Your Excellencies,—Allow me to greet you with a cordial welcome to the capital of my State on your first entrance into Rajputana during your official tour in our province, and we take delight in welcoming Your Excellency not only as the representative of His Most August Majesty the Emperor of India, whom we have been accustomed to regard with feelings of loyalty and esteem, but we welcome you also personally as the champion of the cause of India of the future.

We greet you as one whose sympathy and devotion for India's interests have, I think, been demonstrated in practical form, and whose respect and regard for the privileges and enhancement of the prosperity of the Indian States has, I am certain, been silently but surely valued and much appreciated by those concerned.

We were hoping Your Excellency would have been able to pay us a longer visit last March, but the Indian reforms which were then under the consideration of Government presumably necessitated the cancelling of your proposed visit, which was a source of much disappointment to us all

However, we are entertaining you now with no less assurances of sincere pleasure, and during this interval the reforms also have taken a more practical shape, thus enabling those who are interested in them to study the situation which is calculated to further the progress and prosperity of this country

India is now going through a state of transformation, and its deep slumber has been awakened by the light of education and travel, and partly by the radical march of events in the East

Now has come the time when India, once the greatest of civilised nations is going to attempt to rebuild some of its portions that have tumbled into decay, and when, if it is to eventually claim its position once more alongside those nations who are now on their heights, it must need help and guidance in order to ensure its steady and certain progress

This task of guidance has been ordained by Providence to be placed in the hands of the British nation, whose King to-day rules the mighty dominions over which the sun never sets,

Surely no task has ever fallen upon a nation or a king in history which is greater or grander in its aspect—no task of which a nation could be more rightly proud

All this experience of many centuries, which has taken so long to weld together this great Empire is now being utilised for the benefit of this great continent of India, and it is left to the civilisation of this country to take advantage of this opportunity or to lose it, for the purpose of rebuilding itself under such just and sympathetic rule

Since the time of the great wars of the Mahabharat the old and refined civilisation of poor India had been losing its foothold which was so strongly based on its religion of elevating and life-giving principles and the internal disorders and foreign invasions since had scattered its unity until it was on the verge of degradation and decay

It was at such a time when the destinies of the country were at their lowest ebb that its future fate was placed in the hands of the British people

What India would have otherwise been to-day seems almost difficult to even imagine, but it is no flattery to state that what we see of India today is the result of the tutorship of its new and welcome guardian

I think right-minded and self-respecting Indians need not be ashamed of such a record of guardianship—indeed they can take this opportunity of helping and not hindering the cause of the rulers of this country, helping the rulers to raise India to the level of the other great nations of the world in points of civilisation and otherwise

Your Excellency has now been at the helm controlling the affairs of this vast Empire for four years, and during this time we have been much interested in studying the various reforms which you have initiated with the intention of accelerating the progress of this country.

We have admired the sympathy and courage with which you had persisted in the face of storms and obstacles to embark on schemes intended to help the people of India, and our hearts have gone out to our great and popular statesman, the present Secretary of State for India, in his resolute determination to introduce schemes for the benefit of India in the face of dark clouds appearing on its horizon

But while we thus appreciate your kindness and firmness in extending your helping hand to those who are in need, we are also in complete accord with you in your courage and firmness to suppress with your other hand the recent crimes against the law and the acts of miscreants calculated to retard the harmonious and peaceful progress of the country

We feel glad, however, to think that in most cases they have only been the acts of a few fanatics who have not only deservedly received their due punishment, but have also aroused expressions of strong disapproval from their own countrymen

The future of India must depend a great deal on the hands that are shaping its destiny, but it must also depend in no small degree on the people themselves

Education will, I think, play a large part in its future progress, and it is on how the people digest it and apply it to the problems of life that it will depend how rapid that progress will be.

The problem of the future of India is one which I am sure haunts the minds of many people, and I cannot claim myself to be an exception to the rule, for I think with the question of the future of India also depends the question of the future of Native States with which I am more directly concerned.

The two are so closely connected to each other, and the one question is so dependent on the other that I think they are inseparable

But so long as the education that is given to the children of this country is based on life-giving and man-making principles and the hands that are shaping its destiny are as just, gentle and sympathetic as they have been, specially so during Your Excellency's term of office, I don't think the well-wishers of this great Indian Empire need be over-anxious about its peaceful and brilliant future

I always take delight in ascribing the notions of loyal attachment to the throne and the love of peace and subordination to law among the great masses of the Hindus to the teachings they have received through the old schools or through their own societies regarding those noble principles of our religion.

I am personally of doubt, though I am open to correction, if the purely technical or literary or even degree-taking education can raise that firm foundation of character so essential for the well-being of a race.

I have no doubt that this important subject has already engaged Your Excellency's kind attention, and I would dearly like to see the day when a greater share of moral and religious education was introduced into at least our lower standard schools

HIS HIGHNESS THE MAHARAJA OF UDAIPUR

HIS HIGHNESS THE MAHARAJA SCINDIA OF GWALIOR

2 *Extract from the speech of His Highness the Maharaja of Jaipur at the State banquet on the 29th October 1909*

"When Your Excellency came to India the political atmosphere was surcharged with elements of discontent and unrest, feelings new and alien to the country. In some parts there was a sense of dissatisfaction on account of the supposed flouting of aspiration on the part of Government. This created in inexperienced minds, overwrought by seditious teachings, violent feeling, which found expression in crimes and outrages hitherto unknown in the land. The misdeeds of these perverted youths startled all right-thinking men and produced a feeling of abhorrence and righteous indignation all over the country showing thereby in an unmistakable manner how deep-seated was the faith of the people at large in the moderation, justice and impartiality of the British Government. Your Excellency at this juncture, undeterred by adverse criticism, adopted a line of action which has, I think, given general satisfaction, and I trust I may be allowed to express my warmest admiration of Your Excellency's attitude throughout, of your firm determination to suppress sedition combined with a kindly sympathy for the just and legitimate aspirations of all true and loyal subjects."

His Highness dwelt on the unfortunate neglect of religious instruction in the educational system of the country, but felt confident that His Excellency's wise policy would steer the vessel of State safely across the shoals, and bring all back once more to the safe anchorage that they had enjoyed under British rule. The Maharaja touched lightly on his own public acts in regard to sedition and assured the Viceroy that the British Government would always have the most loyal and unhesitating co-operation from the Jaipur State, and also, he had not the least doubt, from his brother Chiefs in India.

3 *Extract from the speech of his Highness the Maharana of Udaipur (Mewar) at the State banquet on the 3rd November 1909*

Your Excellency has been confronted in India with many troubles and anxieties. Certain evil-disposed persons, using as their weapons the ignorant among the people, have endeavoured to ferment sedition against the British Government, and they have committed some dastardly acts which have recoiled to their own detriment upon the heads of the very persons who committed them.

The policy and measures adopted by Your Excellency for stopping those crimes are sweeping away from the skies of India the black clouds which have obscured them. I am confident that these evil deeds and intentions which are not very wide-spread will not be able to bear fruit over the whole of India and that they will never be able to spread in the Indian States. It gives me pleasure to be able to assure Your Excellency that in my State, at all events, such things will never be permitted to exist.

4 *Extract from the speech of His Highness the Maharaja Scindia of Gwalior at the State banquet on the 6th November 1909*

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There is, however, one matter to which I must allude. I have watched with respectful admiration, the firm and enlightened views by which Your

Excellency and Lord Morley have been guided in dealing with the great question of how to meet the legitimate aspirations of His Majesty's Indian subjects. I rejoice that the folly of an insignificant minority has not for a moment deterred Your Excellency from advancing boldly but cautiously on the path of reform. This is worthy of a nation that has ever displayed an unselfish resolve to do justice throughout the vast dominions which the wisdom of God has placed under the care of the British Empire.

I believe that an overwhelming majority of those who are entitled to some voice in Imperial concerns—including the great body of the Native Chiefs and those who have a real stake in the country—are perfectly content to await with confidence the measures which a benign Government may from time to time see fit to introduce.

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5 Extract from the speech of Her Highness the Begum of Bhopal at the State banquet on the 11th November 1909

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3. Your Excellency, I thank God that the loyalty of my family is fully reflected in the hearts of my subjects, indeed it is difficult for us, who live in Bhopal, to realise that such a thing as disloyalty exists. England has won her way to greatness, not by the force of arms, but by her moral strength, and it is this moral strength which compels the admiration and fealty of every rightminded person. It was, indeed, well for India that she came under control of such a Power, a control which has given to her people the inestimable gifts of peace, justice and liberty, and which has led to a period of prosperity and progress the like of which has never before been dreamt of. It is beyond dispute that the vast majority of His Majesty's Indian subjects, and especially the Muhammedan section of them, gratefully acknowledge the manifold blessings that have accrued to them under British rule, the permanency of which they regard as the only guarantee of their welfare. The disloyalty of the few only serves to emphasise the loyalty of the many. As I have already said, we in Bhopal have little acquaintance with this minority, for my own part, those who compose it remind me of nothing so much as of Sadi's *bat*, who, happening to open his eyes in the daylight, and finding he could not see, straightway fell to abusing the sun.

4. Your Excellency, I as a Muhammadan, can say without any fear of contradiction that the love, loyalty, and faithfulness which the Muhammadans bear to the British Government, is not due to any transitory and world policy, but it is based upon the teaching of their sacred book, which says—"Indeed thou wilt find the nearest friends of the believers among those who call themselves Christians, because they have priests and monks and they are not proud."

5. It is not I alone, but all the Indian Chiefs that unanimously agree that Your Excellency's wise and broad policy has removed the darkness like the Sun that illumines the World. Your Excellency has in fact saved India from a great calamity like an experienced captain of a ship that saves her during a storm. Such statesmanship, I may be permitted to say, runs in Your Excellency's family of which in India in general and Bhopal in particular has had experience a hundred years ago.

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6 Extract from the speech of His Highness the Maharaja of Baroda at the State banquet on the 15th November 1909.

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Ladies and Gentlemen, I rise now to propose the health of my illustrious guest, His Excellency the Viceroy. Two of His Excellency's predecessors, Lord Dufferin and Lord Elgin, favoured us with their visits within my time, and as on those occasions I rejoice once more in according a cordial welcome to the august representative of the King-Emperor. Years have lapsed since the visits of the preceding Viceroys, many changes have taken place with the years, but the friendly relations of my State with the British Government remain unchanged, and the firm and unalterable loyalty of my house to the British Throne remains unshaken. Indeed the lapse of years has drawn our mutual relations yet closer. We form portions of the same great Empire. We are inspired by the same object, which is the preservation of peace, and public tranquillity, and we are animated by the same wish, which is the promotion of the progress, the prosperity and the happiness of the people.

My Lord, it has always appeared to me that any true progress among the people must embrace their social and moral advancement, as well as their material well being. I think the true function of Government is not to stand entirely aloof in these matters, but to keep pace with modern times and modern ideas. After all the masses are yet sunk in appalling ignorance, and they need our support, encouragement and help in effecting reforms. To minister to social and moral advancement has always been the consideration and one of the duties of the sovereign in the East. I have myself sometimes been criticised for taking administrative action to correct social evils and religious abuses. So far, however, as one can judge, from the results, my policy has met with some measure of success. In these and in all other matters of internal administration every Native State, in proportion as it enjoys liberty of action, grows in efficiency in securing the welfare of its subjects, and, therefore, in promoting general progress any curtailment of freedom in internal affairs lessens our sense of responsibility, and weakens our power for effecting improvement. Loyalty has always been considered in the East as one of the first virtues in a people. But loyalty, when merely sentimental, is of small value. It should be real, genuine and active. To secure such loyalty there should be a community of interest between the subjects and the ruling power. The former should have a proper share in the administration of the country and should feel that the Government is their own. It is for this reason that I hail with pleasure those great measures of reform which Your Excellency initiated and which His Majesty's Government have accepted. These reforms will open out to the people of India a larger field of activity, and inspire them with a greater sense of responsibility in the performance of the civic duties, and future generations will recognise in these statesman-like measures a forward step in the progress and advancement of the community under the rule of England.

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I know full well the difficulties with which education is beset, difficulties which many are liable to ignore in their haste to achieve in a day those results which are attainable only by the patient and selfless work of generations. I would have my people learn that progress, to be real, must have

its roots in themselves, that they must look to the orderly conduct of their lives, that it is probity, fair-mindedness, public spirit and loyalty to the State which make good citizens and that he who can subordinate his private interests to the common weal is he who is fitted for a voice in affairs of State. The truly educated will regard the personal liberty they enjoy as the most precious blessing of civilization, and their duties to the State as essential to their corporate existence.

Those, on the other hand, who confound liberty with license, and seek to undermine authority, must be repressed with a firm hand, and not allowed to endanger the public tranquillity or general progress. These, my Lord, are my ideals of education and self-help. In all my endeavours to achieve progress and to make my subjects worthy citizens, I know that I can rely on Your Excellency's support. I cordially acknowledge the ready assistance which my administration receives from Your Excellency's Government, and as cordially I assure Your Excellency of my readiness to respond, within my power, to any call for co-operation with the Government of India.

I desire, in conclusion, to express on behalf of the Maharani and of myself the gratification that we feel at Lady Minto's visit to our capital, and I wish once more to offer to Her Ladyship and to Your Excellency our heartiest welcome. Our welcome, my Lord, is fraught with the most heartfelt gratitude that Providence has saved Your Excellency from the dastardly attempt at outrage, of which the news has just reached us.

I voice, my Lord, the feelings not only of myself and of my people but also of the whole of India, in expressing, so far as words can express, our profound horror that such a crime could ever be thought of, much less attempted against one who is not only the representative of His Majesty, but also the truest friend and benefactor of our country.

*7 Extract from the speech of His Highness the Maharaja of Mysore
at the State banquet on the 25th November 1909*

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On such an occasion it is only fitting that I should touch briefly on public affairs which Your Excellency is directing with so firm and sympathetic a hand. The four years which have elapsed since you came to India have been years of strenuous work and grave anxiety and the Government of India have had no light task in maintaining that law and order which have always been the watchword of British Rule in India. The struggle has been a severe and protracted one, but there is every reason to hope that the tide has at last turned, and that—thanks to the firmness and restraint of Your Excellency's Government to their statesmanlike foresight in recommending and obtaining for educated Indians a larger share of representation, without at the same time relaxing their determination to suppress lawlessness—India may look forward to an era of peace and contentment. Your Excellency, the measures adopted by the Government of India to maintain their authority have always had my sincere sympathy, and I am, and always have been, ready to co-operate to the utmost of my power in loyally supporting those measures. Your Excellency needs no

assurance of my own loyalty to our beloved King Emperor, and as regards my people I take this opportunity of publicly expressing my conviction that they do not forget the intimate associations of the past and are actuated by nothing but friendly feelings for the British race, and by loyalty and gratitude to the Paramount Power. Happily, therefore, it has not been necessary for my Government to adopt any repressive measures except to arm ourselves, as a matter of precaution, with powers against seditious writings in the public press. These powers are, I firmly believe, necessary. Their existence is in itself sufficient to keep in check the evil against which they are aimed, and I trust it may never be necessary to enforce them rigorously. But it is not only as a strong and sympathetic Ruler that Your Excellency's name will live in Indian History. I feel that I may speak in the name of my brother Chiefs in all India when I say that Your Excellency has established a peculiar and special claim to our gratitude and affection by the sympathy and consideration which you have shown both in word and deed in your policy towards Native States. I can say from my heart that we Chiefs respond most warmly to the generous and kindly sentiments which your Excellency has so frequently and eloquently expressed towards us, and that we shall ever cherish your memory as one of our truest friends and sympathisers. I would also like to express on this occasion the deep horror and indignation which has been aroused all over India, and which is no where stronger than in Mysore, at the dastardly outrage recently attempted at Ahmedabad. We all share the universal feeling of thankfulness that your lives and persons were so mercifully protected.

Notification, dated the 5th March, 1910

The following papers are published for general information in continuation of Notification, dated the 22nd January, 1910, page—*ante*.

Letters to His Excellency Lord Minto from certain Ruling Chiefs

- 1 Letter from His Highness the Raja of Dhar, dated the 15th January 1910
- 2 Letter from His Highness the Maharaja of Jaipur, dated the 6th February, 1910
- 3 Letter from His Highness the Maharaja of Alwar, dated the 6th February, 1910.

From—His Highness the Raja of Dhar, to His Excellency the Viceroy and Governor-General of India, dated the 15th January, 1910.

After Compliments—I am very much honoured by Your Excellency's Kharita dated the 6th August, 1909, in respect to the concerting of measures against our common enemy the seditious party, who under various garbs have been disseminating seditious ideas in the minds of the people not only against the British Administration but all constituted authority and order of society in British India, and who are even trying to get a footing in some of the Native States in India as well. It is a matter of deep regret to me that a Kharita containing a subject of such

vital moment involving the common interest of us all should have been delayed so long owing to various unavoidable circumstances and now with Your Excellency's permission I may be allowed to send the following reply —

I fully agree with Your Excellency in thinking that the time has come when the Native Princes of India should no longer remain satisfied in attempting to eradicate this one disease from their own territories, but should also co-operate with the Paramount Power in concerting measures for the eradication of the disease altogether wherever it is found in India, so that the territories they rule over should also be free from import of germs of the same from outside

In this connection the Native Chiefs in India have a two-fold task before them —

- (i) The prevention of any probable growth of such disease within their States, and to keep them free from it, without unnecessarily altering the internal arrangements
- (ii) The combating against the import of sedition from outside, and thus prevent the propagation of the same amongst their own subjects.

To achieve the first end in a generally law-abiding people, who have every reverence for their Ruler, is easier than the second, which, with the spread of civilisation and easy means of communication of ideas to others, is much more difficult.

Although a few years ago some signs of sedition were visible in Dhar generally amongst students, yet prompt and severe steps taken by the Darbar not only enabled me to put down the same in its very beginning but made the condition such that any growth of the same would not be congenial for the future

In spite of the numerous difficulties that beset our path in the performance of the task before us, I am glad to inform Your Excellency that since then I have been able to keep my State free from the pest, by adoption of the following measures —

(1) I have arranged to keep very strict and secret watch over my people that they may not indulge in any seditious topics and thus prepare a soil for the growth of the evil in future

(2) No public meeting to discuss political subjects is permitted to be held within my territories, and no public meeting of any kind can be held without the permission of the Darbar, such permission being but rarely given and then only for deserving objects. When such meetings are held the proceedings are always watched by the State Police.

(3) There are only two printing presses in Dhar, one of them belongs to the State. Both of them usually print forms and circulars, etc., used in the various States. Every precaution is taken by the Police that no objectionable publication may emanate from them

(4) As the seeds of sedition are generally and easily sown in the young and unformed minds, my Darbar have taken especial care in their education. Not only are objectionable teachings of every kind strictly prohibited but as a further safeguard the Darbar, before the appointment

of teachers, causes careful enquiry into the antecedents of applicants, so that no teacher with seditious or morbid ideas can be employed

(5) All public institutions are prohibited from subscribing to objectionable newspapers

(6) A diary of every foreigner coming into the town is kept by the State Police, and information of all suspected characters is given to the proper authorities

(7) Even Sadhus and Fakirs are not allowed to stop more than three days in any particular town within the State. By making this a general rule and by watching the movements of the new comers much mischief is avoided without unnecessarily exciting the indignation of, or wounding the religious feelings of, people which are generally respected

(8) Moreover information of all suspicious characters coming into the State is beforehand given to us by the British Police through the Thagi and Dakaiti Department for which my thanks are due, as by obtaining such information in time my Darbar become forewarned and forearmed

(9) Above all, to avoid the dangers which may likely arise in spite of our care and vigilance from the hands of cowardly and unscrupulous wretches, the Explosive Act has been passed

Measures such as these for the prevention of any probable growth of the evil in my State or import of the same from outside could only be effected by loyal co-operation of my people with my Darbar and the confidence of the political authorities in the action taken by us and timely advice and help given by them, for which my special thanks are due, that I have been able to combat against this evil, and my complete success will rest on the detail and effective operation of these measures

I am sure all my brother Chiefs have adopted similar measures, suited to their own local conditions and people, yet to facilitate matters more and for the quick adaptation of means to gain our common end I may be allowed by Your Excellency to mention the following proposals —

(i) That communication between the State police of different Native States may be made more frequent and free than it is at present

(ii) That as this is a cause in which all of us are equally concerned mutual discussions might be allowed to be held amongst the brother Chiefs and the Political Officials at the seat of the Local Government when they meet there to discuss other important questions concerning their welfare

(iii) As civilization is spreading under the aegis of the British Raj, we in the Native States are trying to keep pace with the times and our attention turned more towards the education of the masses, thus making our people to face a new danger—the danger of imbibing unhealthy ideas through objectionable newspapers, whose unhealthy tone unless very much improved will frustrate our efforts

(iv) That the training to be given to the masses may be based on religious principles and ideals and inculcation of good morals in the minds of the younger generation should be insisted upon for the foundation of their character, in order to make them loyal subjects and responsible

citizens All public schools should be graded according to the number of such men turned out rather than the high percentage of passed out bread-winners

(v) Lastly as the success of our undertaking depends on the co-operation of the people, they must be impressed with the good intention of any step we take in the matter and of our unalloyed sympathy towards them; and the persons entrusted to carry out these measures should not only do their duty faithfully and loyally, but without unnecessarily creating that alarm in their minds which is a great obstacle in the path of success

In conclusion, my Lord, it will not be out of place to assure Your Excellency that I with all the resources of my State and people will ever be ready for any service that may be required of me by the Paramount Power, and I am ever ready to render any assistance to achieve that end which is necessary for safeguarding our common interest.

From—His Highness the Maharaja of Jaipur, to His Excellency the Viceroy and Governor-General of India, dated the 6th February 1910

After compliments,—I beg to acknowledge the receipt of Your Excellency's Kharita, dated 6th August, 1909, on the subject of concerted action to check the dissemination of seditious propaganda in different parts of India. Owing to circumstances over which I had no control I was unable at once to reply to Your Excellency's Kharita. But of this I may be permitted to assure Your Excellency that the delay was not due to any lack of interest in the subject or of readiness to offer my co-operation.

Far from it, the matter has all along been prominently before me

(2) I have viewed with great anxiety the endeavours that have been made to spread sedition in certain Native States and it will, I think, be a matter of the greatest regret if these mischievous and pernicious efforts are allowed to go any further and if States hitherto unpolled by the foul poison should come to be affected by it

(3) Therefore, I welcome most heartily Your Excellency's gracious invitation to co-operate with the Government of India, I realise that the interests of the Government and of the Rulers of Native States are identical in this matter, I cannot doubt that the spread of this agitation must strike at the very foundations of the priceless boon of peace and good and settled Government that India has so long enjoyed under the wise and just rule of the British Raj, and I assure Your Excellency in the strongest terms I can command, that I am at all times unreservedly willing to associate myself with, and assist in the carrying out, of whatever line of policy Your Excellency may think it best to adopt in meeting the situation

(4) I have indeed both in my public speeches and in the manifestos I have issued to my people, already declared myself to this effect in plainest possible language

5 But though I have done this in view of the general situation and for the purpose of protecting my people from what I feel is a danger to which they are like others constantly exposed, yet it is a matter of no little satisfaction to me to know that my State is so far free from sedition and its mischievous influence. And I am confident that by the

deterrent measures adopted by my Darbar, as published in the above-mentioned manifestos, we shall be able, if not to exclude entirely the seditious agitator from my territories, at all events, to render his preachings and machinations comparatively innocuous and to make his position an eminently precarious one for himself.

6 I note with much satisfaction that Your Excellency's views with regard to concerted measures to meet the situation will not involve interference with the internal administration of the Native States. The Jaipur Darbar, as I have said above, have already taken a good many precautions. They have also, whenever necessary, been co-operating with the Government of India, with regard to giving information about such suspicious characters as have visited Jaipur. The Darbar are also prepared loyally to render any further assistance that may be required in this direction. But at the same time, I deem it advisable so far as local conditions are concerned not to bring sedition too prominently to the notice of my people to whom it is fortunately wholly unknown as yet. Nevertheless, I greatly appreciate Your Excellency's kindness in consulting me on this important subject and I desire to thank Your Excellency cordially for the wise and liberal policy pursued by Your Excellency's Government, which has resulted in the appointment of Indian gentlemen as members of the Council of the Secretary of State and of the Executive Council of His Excellency the Viceroy and Governor-General of India. In fact, the Reform Scheme, which places the people of India under a deep and ever-lasting debt of gratitude to Your Excellency is a sure sign of Your Excellency's kind and sympathetic feelings towards them. Indeed after all that has been done, I find it difficult to suggest for British India anything else that could help to eradicate the serious evils of sedition and anarchy that prevail, but in deference to Your Excellency's wishes I will offer such further suggestions as occur to me.

(a) No doubt the measures already taken to suppress the publication of seditious matter in newspapers have done much to lessen the present evil, but I am constrained to say that much still remains to be done. The persistent murderous acts perpetrated in various parts of the country, indicate that a spirit of lawlessness is still abroad and the question is what steps should be taken to stamp it out. The seed no doubt, was sown by seditious newspapers but the remedy lies not in the total suppression of newspapers, but in guiding them along right channels. The Anglo-Indian papers have but a small circulation and they do not reach the entire mass of literate people. I, therefore, ask cannot a select few of the existing vernacular papers be encouraged to point out the evils of sedition and the disasters it has brought in its train? I believe, if vernacular papers are rightly conducted they have the power to do good and not harm. Can the influential moneyed and right-thinking portion of the people not be induced to support papers and periodicals of their own, whose main object will be to expose the pernicious teaching and perverted information contained in the Gutter Press, to discuss Government measures in a loyal spirit and to circulate the correct views of the measures and actions of Government. If informal meetings between editors and high-placed Government officials could be arranged it would give excellent opportunities for exchange of ideas on important public questions. The editors who discharge their responsible duties

conscientiously should be encouraged in every way, while those that are indiscreet should be promptly sent for and their mistakes pointed out to them. Should this not have the desired effect, stronger measures must of course be resorted to and the Government will be well-advised to arm themselves with the power to take such measures. I have sanguine hopes that this policy will provide an efficacious check on the printing of seditious articles and that the tone of Vernacular Press will soon improve.

The seditious movement has so far been able to influence only a small percentage of the population and I earnestly hope that with advent and wide circulation of highly conducted papers the great mass of the people will always remain staunchly loyal to the Suzerain power in India.

(b) When a new daily paper or periodical is started in British India the management of the paper should be made to deposit a certain sum of money as a guarantee for the paper being conducted on right lines and this deposit would be forfeited should the paper begin preaching seditious doctrines. I am sure the fear of losing their money would act as an effective check upon the tone the editors adopt.

(c) It should be impressed upon the leaders of the different communities that it is their bounden duty to bestir themselves, to help and deliver their deluded young men if the country is not to go to wreck and ruin. If organisations were formed in very important towns all over the country of the best men, the lovers of order and good Government, and if they are induced to expose the hidden machinations of sedition-mongers, their baneful influence will be successfully counteracted. Being composed of the members of the same community such organisations by virtue of the inherent knowledge they possess of the special conditions, habits and customs of the people, will be better able to cope with the situation than would the most capable detective agency. Perhaps these organisations may on occasion be able to bring to the timely notice of the authorities the intention to disturb the peace or commit acts of violence.

(d) My next point has reference to the neglect there seems to be of religious education, a point to which I drew Your Excellency's attention at the state Banquet at Jaipur on the 29th October 1909. I must say I have great faith in a system of education in which secular and religious instruction is harmoniously combined as the formation of character entirely depends upon a base-work of religion, the noble ideals which our sacred books will put before the younger generation will, I fervently hope, make them loyal and dutiful citizens of the Empire. In the shastris the monarch is the embodiment of all that is Great and Good and he is considered a Divine leader of men. Such teachings must inevitably have their effect on impressionable young men, and it is perhaps due to such ideals that sedition and anarchy have so small a footing in the Native States as a whole. In the Chief's College Conference held at the Mayo College in 1904, I impressed upon my colleagues the necessity of religious education for the sons of Chiefs and Nobles of Rajputana. It should be one of the principal objects in all schools for the teachers, the pandits and the moulvies to instil in the minds of their pupils correct notions as to the duty they owe to the community they belong to and to their Sovereign.

7 In conclusion, I would again wish to thank Your Excellency for taking up this important subject and for so kindly consulting me about it. As I have said before, I believe that only a small fraction of the

population of India has been contaminated by the seditious germ. But that faction has, it seems, been carefully organised by able, rich and unscrupulous men. The vast majority of Indians are loyal and in their quite undemonstrative way warmly appreciate the blessings of peace, personal and religious liberty and security. It is the bounden duty, therefore, of all responsible for the well-being of these law-abiding millions to see that the of poison sedition does not reach them. This Your Excellency means to do and such assistance as it lies in my power to give I offer most cordially. An organised and concerted campaign, offensive and defensive, against the common enemy is what is wanted. At the head of this combination stand the Government of India and with it the Ruling Chiefs of Native States, whose interests are identical with those of the Government, and who, if I may venture to say so are looked up to as the natural leaders of Indian society. There are also the leaders of the different communities referred to in paragraph 6 (c) above, all these forces standing and working together will be able to show so strong a front that this wretched spectre of sedition that has come among us will soon be crushed and banished from the land, and we shall return once more to the unclouded happiness and prosperity we have always enjoyed under the great, wise, and beneficent rule of His Majesty the King, Emperor of Great Britain and India.

From—His Highness the Maharaja of Alwar, dated the February 1910

After compliments—I have much pleasure in acknowledging the receipt of Your Excellency's Kharita of 6th August 1909, regarding sedition and would ask you to accept my grateful thanks for the kind assurances given in this important subject.

This new and most objectionable movement of sedition has come into evidence more or less of recent years, and Your Excellency is well aware with what feelings of disgust and disapproval it has all along been viewed by the well-wishers of India and specially by the Indian Chiefs.

Your Excellency's remark is very true that the time has come when common and concerted action is necessary in order to suppress this movement.

The pernicious effects of this movement and the means that have been utilized for spreading it abroad have already engaged Your Excellency's attention, and the Acts that have been passed and other political measures that have been adopted by Your Excellency's Government have no doubt been responsible for suppressing sedition a good deal. With the due exercise of legitimate force, judicious treatment and prompt justice, the last of which is most necessary in order to have the desired effect, it should not be difficult to control this movement in the future.

In order, however, to deal with the subject thoroughly it is equally necessary in my mind to keep in view the causes from where it should be advisable, practicable and possible.

With the light of modern education and travel shining ahead the people of this country no doubt are awakening to wider aspirations. And with the enjoyment of absolute peace and the spread of communications their thoughts seem to be rising towards greater political ambitions, while the struggle of competition is drawing to their minds the ideas of mutual comparison, liberty and prosperity.

All these forces of nature are steadily gaining ground in the minds of a rapidly growing majority of people though in however small a minority these may be considered to be at present

The spread of these new ideas in a country like India where until some time back they have been so foreign or at any rate so scarce cannot in every case at least for some time be expected to find favourable soil

In order, therefore, that they may be properly assimilated so as to bear good fruit it seems to me that the ground on which they are to be cast must be simultaneously prepared with sound education based on teaching religion and building character

I had the pleasure of referring this subject to Your Excellency's kind notice when I had the good fortune of entertaining you recently in Alwar, and I was much encouraged with Your Excellency's remarks in reply

I have no doubt that the Indian States should be and will be the first to take the initiative in this matter, but my idea is that it is not the Indian State where these new ideas are capable of rapid development

Though the Government of India, have all along very wisely refrained from interference in religious ideas, I still believe that they can do a great deal directly and indirectly to help in the encouragement of greater moral teachings in schools, etc

There are not wanting loyal bodies in British India, I believe, who would not welcome such encouragement, and even if the Government abstained from taking any direct steps, I have no doubt a great deal could be done by indirect means

This question, however, has by no means escaped Your Excellency's attention as can be judged from so many public utterances you have made on the subject when you have expressed your intimate knowledge of the mischief that is already caused in the absence of such education

These new aspirations and ambitions will require sympathetic guidance and firm control in the future and where such ambition will be incapable of fulfilment they are likely—as they have already done in the past—to lead to discontent.

In order to keep pace with the times the Government of India has already taken the initial step by introducing reforms in the political machinery of the Government which has helped in no small degree in allaying discontent.

In cases of some more ambitious minds it may not be possible to satisfy their aspirations, but in no case must such discontent be allowed to lead to sedition or to take the form of violence. On the least sign of any such movement prompt justice and vigorous action will be necessary in order to bear the desired results

While Your Excellency has already been doing so much for British India a great deal has already been done in the Indian States, and where anarchy or sedition has shown any tendency of infection it has met as you are aware with exemplary treatment

My opinion is that in future too such cases will receive the same kind of treatment. So long as the movement of outsiders entering the States with doubtful motives is carefully watched and prompt measures are taken when it becomes necessary I venture to hope that there will not be

I feel grateful to Providence that Rajputana has so far proved the strongest barrier against this movement and my own State I am happy to say my people seem well contented and free from any such infection

I have every trust in their loyalty and allegiance and I feel certain they will not abuse my confidence

Regarding Your Excellency's allusion to common action being taken on the part of the British Government and the Indian States, I can assure Your Excellency on my behalf that I shall be willingly prepared to co-operate in any such action as you suggest of circulating information and watching and communicating about suspicious characters whenever it may be necessary

In conclusion, I would ask you to accept my cordial thanks for your kind assurances of your policy of non-interference in the internal administration of our State and for your very kind offer of assistance should such be desired. These sentiments we not only very warmly appreciate, but they make us all the more prepared to do what lies in our power to help in the cause of the Empire

HIS EXCELLENCY LORD HARDINGE'S SPEECH IN THE OPENING OF THE FIRST SESSION OF THE LEGISLATIVE COUNCIL IN DELHI, ON THE 27TH JANUARY 1913

Although I have not yet recovered from my wounds, and have been compelled under doctor's orders to abstain from all public business of every kind, I have felt not only a desire, but that it is my duty, to come here to-day to open the first Session of my Legislative Council in Delhi, and to give a cordial welcome to the newly elected and newly appointed Members of my Council. I am sure that at the same time none of you will begrudge me an expression of regret for those who have not returned, since after two years loyal and active co-operation with my Government in the legislative work of the Government of India, I regard them not only as former Colleagues in Council but also as friends. I am delighted to see some of the former Members of my Council again in their places, and I am confident that they will again bring to our Council the same spirit of harmony, goodwill and legislative ability as during the past two years that I have had the honour of presiding over their deliberations. As regards the new Members of my Council, I bid them a cordial welcome, and I am sure that I can count on them to maintain the same high standard of dignity in debate as has so markedly distinguished our deliberations in the past.

I feel deeply grateful to you all for the warmth of your reception here to-day. I always knew that I could count on your sympathy in the suffering that has been my lot during the past few weeks, and if there has been one thing that has tended to alleviate those sufferings, it has been the knowledge of the sympathy shown towards me by all classes, creeds and communities throughout the length and breadth of India. I should like to take this opportunity when addressing my Council, who represent the whole of British India, to express my profound gratitude for the genuine outburst of sympathy, the devout prayers and good wishes that have been heard on every side, and if I may be allowed to say so, I feel convinced that those prayers have not been unanswered. When five weeks ago I had recovered consciousness and was able to think over what had passed, my feelings were, in the first instance those of profound gratitude to Almighty God for His merciful protection of Lady Hardinge and myself, of real grief for the poor man who had lost his life in the performance of his duty,

of very deep disappointment that it were possible that such misguided men as those who plotted and committed such a useless crime could now be found in India, and of sorrow at the thought of the injury to the sentiments of the whole of the people of India who would, I knew, regard with horror and detestation the perpetration of a crime which is contrary to their own precepts and instincts of humanity and of loyalty, as well as to their religious principles. The gratitude that I felt at the miraculous preservation by the Almighty of Lady Hardinge and myself from the hand of the assassin was, I know, also deeply felt throughout India, but words fail me when I think of the cruel murder of those humble people who were ruthlessly killed, and I deeply deplore the loss which their families have sustained. In my desire for kindly intercourse with the people and accessibility to them, I have always discouraged excessive precautions, and I trusted myself and Lady Hardinge more to the care of the people than to that of the police. If it was an error, it is an error that I am proud of, and I believe it may yet prove not to have been an entirely mistaken confidence, for out of evil good may come. Is it too much to hope that the storm of public indignation evoked at the outrage may give Indian terrorists cause for sensible and humane reflection and repentance? It is difficult to believe that these individuals are a class apart, and that they do not belong to communities and mix with their fellow-beings. Are they really susceptible to no influence and no advice? Have they no contact with moderate and wiser men? Still, whatever I may feel on the subject of the crime itself, I only wish to assure you and the whole of India that this incident will in no sense influence my attitude. I will pursue without faltering the same policy in the future as during the past two years, and I will not waver a hair's breadth from that course.

What I have said so far has been somewhat of personal character, but I have one word more to say to the people of India which I say with a profound sense of the gravity of the import of my words. I need hardly recall to the memory of any body that the recent incident is not an isolated episode in the history of India, but that during the past few years both Indians and Europeans, loyal servants of Government and of India, have been less fortunate than I have been, and undeserving of the cruel fate meted out to them, have been stricken down by the hand of the assassin. These deplorable events cast a slur on the fair name of India and the Indian people, to whom I know they are thoroughly repellant, and I say to the people of India—not merely as a Viceroy intensely jealous of the honour of the country that he has been called upon to govern, but as one of the many millions in India of the fellow-subjects of our King Emperor, and one who loves India and the Indian people amongst whom he is living—I say that this slur must be removed, and the fair fame of India must be restored to a high and unassailable plane. Knowing, by the kindly and genuine manifestations of sympathy received from every side, how profoundly repulsive such crimes are to the people of India, it may be asked what remedy can be applied to prevent their recurrence. To this I would reply that such crimes cannot be dismissed as the isolated acts of irresponsible fanatics, and that they are in most cases the outcome of organised conspiracies in which the actual agent of the crime is not always the most responsible. The atmosphere which breeds the political murderer is more easily created than dispelled. It can only be entirely and for ever dispelled by the display and enforcement of public opinion in a determination not to tolerate the perpetration of such crimes and to treat as enemies of society, not only those who commit crimes, but also those who offer any incentives to crime.

Amongst such incentives to crime should be included every intemperance of political language and methods which are likely to influence ill-balanced minds and lead them by insidious stages to hideous crimes. The universal condemnation throughout the whole of India of the crime of the 23rd December, and the anxiety shown for the detection of the criminals, have however filled me with hope for the future, and have inspired me with confidence in the determination of the people of India to stamp out from their midst the fungus growth of terrorism and to restore to their beautiful motherland an untarnished record of fame. Imbued as I am with this hope and confidence, my faith in India, its future, and its people remains unshaken, and if, as I confidently anticipate, the realization of my faith is confirmed, then I may add that the two innocent lives so sadly lost on the 23rd December will not have been sacrificed in vain.

The Hon'ble Sir G M Chitnavis —My Lord, on behalf of the non-official Members of this Council, I crave leave to say how sincerely gratified we all are, after the wicked attempt made upon Your Excellency's life, to see Your Excellency presiding over the first meeting of this Imperial Legislative Council in the new Capital of the Indian Empire. My Lord never was the country more deeply shocked and stirred than when it heard of the dastardly outrage perpetrated on the occasion of your State entry into this Imperial city. Equally deep and wide-spread was the feeling of relief and thankfulness at the news that by the interposition of a merciful Providence the attempt of the miscreant had happily failed of its object, and Your Excellency's valuable life spared to the people and to the Empire. My Lord, millions of hearts have ached daily for one whole month to hear of the suffering to which Your Excellency has been so cruelly subjected and of the agony which Her Excellency Lady Hardinge has had to undergo. The daily bulletins have been anxiously awaited and closely scanned, and, as rightly said by Your Excellency, millions of men of all creeds have prayed from day to day and week to week in different tongues and in diverse forms to the Father of all for Your Excellency's speedy restoration to health. Great has been the anxiety of the people for Your Excellency's recovery. Equally great will be the sense of relief and thankfulness and joy with which they will receive the reassuring tidings that Your Excellency has so far recovered as to be able to cheer us by your presence here to-day.

My Lord, the calm and heroic courage which Your Excellency and Lady Hardinge displayed in the most trying circumstances, coupled with the knowledge that Your Excellency has not allowed this detestable crime to affect in any way your well-known sympathy and solicitude for the well-being of the people committed to your care, has deepened their grateful admiration and affectionate esteem for you. The noble words which have fallen from Your Excellency's lips to-day—your kindly appreciation of the sympathy which has been felt for Your Excellencies throughout the country and your large-hearted and statesmanlike declaration of your determination to adhere to your beneficent policy of administration and your solicitude for the families of the people who lost their lives will be received throughout the country with feelings of profound satisfaction and gratefulness.

My Lord, I voice the feelings not only of the members of this Council but of the whole country in wishing that Your Excellency may soon be restored to perfect health and continue for the full term of your office and—more—to guide the destinies of the teeming millions of this

HIS EXCELLENCY LORD HARDINGE

great Empire and we hope that before long the culprits will be found out and that this crime will be uprooted and the fair fame of India will be re-established

The Hon'ble Sir C H. Armstrong —Your Excellency, on behalf of the European members of this Council, I venture to say how very pleased and thankful we are to see you here to-day, restored to health, after the awful crime perpetrated upon you on the day of the State entry. We have watched with the very greatest interest the daily reports of your health, and congratulate you most heartily on your wonderful recovery and escape. We earnestly hope that you may be spared to continue your good work amongst us, and that you may soon be restored to that perfect health without which the great work you have undertaken cannot be carried on. We deplore more than I can say the awful crime that was perpetrated against you, and can only hope that by firm and good government, deeds of this character will be completely wiped out. Let me assure you again what a very great pleasure it is to see you here again to-day.

Extract from the speech of His Excellency Lord Hardinge in the Council of the 17th September 1913

There has been elsewhere another centre of disturbance where I hope and trust that, with the growing co-operation of the inhabitants, normal conditions may be soon restored. I allude to the regrettable recrudescence of dacoities that has taken place during the past few months in the eastern part of Bengal, some of them being of a particularly savage character. I do not want to exaggerate the importance of these deplorable incidents, but one may well ask the cause and origin of such acts in a Presidency where any excuse for disorder and unrest has been removed by the gracious announcements of the King-Emperor and and it would be difficult to find an answer to this inquiry. Some of these dacoities perpetrated by so called bhadralog have been described as political dacoities. Personally I fail to see any difference between an ordinary dacoity and a political dacoity. They are both crimes of a heinous description, while the perpetrators, be they bhadralog or others, are all criminals of equal degree, the bhadralog being, if anything, worse than the others, since from their position they have not some the same temptation brought on by want and misery, and from their education they ought to know better. It is a source of profound regret to me that students from schools and colleges should, on more than one occasion, have taken part in such proceedings. Very different indeed was the conduct of those students from the schools and colleges and University of Calcutta who went to the relief of the unfortunate sufferers from the recent terrible floods, who were in danger of death from hunger or drowning. Those are the young men whom we can honestly and heartily admire for their courage and endurance.

I trust that some of those ill advised young men who engage in dacoities may take my words to heart and turn over a new leaf, for the injury inflicted on respectable families by the acts of some of their younger members under the evil influences to which unfortunately they are often exposed in some of their schools and colleges, has become a serious matter in Bengal, and calls for active co-operation on the part of the respectable bulk of the population with the authorities to insure internal peace, without which it is impossible to secure the progress and development of the Presidency which we all desire to see

Judgment of the High Court, Calcutta, in the matter of a petition of Mahomed Ali, (1st September 1913)

The Judgment of the Court was as follows —

Jenkins, C J — This is an application to the High Court under section 17 of the Indian Press Act, 1910, to set aside what is described as an order of forfeiture under section 12 of that Act

The order of which complaint is made was published in the *Calcutta Gazette*, Extraordinary, July 22nd, 1913 and runs as follows —

“NOTIFICATION

“No, 2296 P D The 18th July 1913 Whereas it appears to the Governor in Council that a pamphlet, entitled “Come over into Macedonia and help us” contains words of the nature described in section 4, sub-section (1) of the Indian Press Act, 1910 (I of 1910) inasmuch as they are likely to bring into hatred or contempt certain classes of His Majesty’s subjects in British India

“Now, therefore, in exercise of the power conferred by section 12, sub-section (1) of the said Act, the Governor in Council hereby declares all copies of the said pamphlet wherever found to be forfeited to His Majesty”

This is not the first pronouncement on this pamphlet, for by a similar notification published in the *Gazette of India* on the 16th July 1913 the Governor General in Council declared the pamphlet to be forfeited

And even before this there had been notification to the same effect by the Government of Bombay

Section 12 (1) is in these terms “Where any newspaper, book or other document wherever printed appears to the Local Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government, may by notification in the Local Official Gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty

The relevant portions of section 4 are as follows —

“Whenever it appears to the Local Government that any printing press in respect of which any security has been deposited as required by section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor implication or otherwise *

To bring into hatred or contempt any class or section of His Majesty’s subject in British India”

Then the consequences indicated in the Act are to follow

There is a curious difference between the language of section 4 and of section 12 Under section 4 what may be declared to be forfeited is “all copies of such newspaper, book or other document” Under section 12 what may be declared to be forfeited is “such newspaper, book or other document” Section 12 stands alone in this respect and its language may be contrasted with that of sections 6, 7, 9, 11, 13, 16, and 20 as well as section 4 I doubt whether any difference of operation was intended

Section 17 entitles any person having an interest in any property in respect of which an order of forfeiture has been made under section 12

to apply to the High Court to set aside the order, but only on the ground that the newspaper, book or other document in respect of which the order was made did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1). Together with this section must be read section 22 by which, with a qualified exception in favour of the High Court, all jurisdiction is in effect barred. This section, save for the exception, reproduces section 16 of the short-lived Press Act of 1878, commonly known as the Vernacular Press Act. Two conditions then are necessary to a forfeiture in accordance with the terms of section 12. First it must appear to the Local Government that the publication contains words, signs or visible representations of the nature described in section 4, sub-section (1), and, secondly, the Local Government must, by notification in the Local Official Gazette, stating the grounds of its opinion, declare such publication to be forfeited to His Majesty. The first condition implies that the publication had been seen and read by the Local Government prior to its declaration of forfeiture, for it must first form an opinion. Though there is no evidence as to this, the Advocate-General assured us that a copy must have been in the Local Government's possession before the declaration. I will assume this to be so. The second condition is one which has given rise to considerable discussion. It has been urged that it is a necessary condition of an effective forfeiture that the grounds of the Local Government's opinion should be stated, and that this has not been done in the present case.

On hearing that it appears to the Government in any particular case that there are words of the nature described in section 4, (1), the first question that occurs to anyone whose duty it is to enquire, is, why does it so appear, what are the grounds of its opinion?

Those responsible for this Act foresaw this, and so they specifically provided that the forfeiting notifications should state the grounds of the Local Government's opinion. But when we turn to the notification no such grounds are stated, nothing in the nature of a fact is set forth, there is merely a citation of those words of the section which are invoked.

The notification amplified to fit the circumstances of this case seems to take this shape,

"It appears to the Local Government that these are words likely to bring into hatred or contempt a class or section of His Majesty's subjects in British India and the grounds of its opinion are that the words are likely to bring into hatred or contempt certain classes of His Majesty's subjects in India."

But that repetition of an opinion cannot be its grounds, and yet that is all that the notification furnishes in the shape of grounds. This is obviously insufficient and not a compliance with the terms of the Act.

Moreover I think that this direction in the section is mandatory, and that the Legislature intended to impose, and has imposed, on the Local Government an imperative obligation to state the grounds of its opinion.

The language of section 4 may be compared. It requires that the notice forfeiting the copies of the publication should be in writing and state or describe the offending words, signs or visible representations. These provisions as to the statements to be contained in forfeiting documents were, I think, designedly inserted and were intended to be a

check on the power of forfeiture vested in the Local Government, for it is easy to see that the obligation to state grounds furnishes a valuable safeguard

The statement of grounds may for another reason to be regarded as an essential part of the Legislature's scheme, for it might help the High Court to perform the duties cast on it under section 17

And in fact we have in this case been considerably embarrassed, as will appear later, by the absence of grounds

The notification therefore appears to me to be defective in a material particular, and but for section 22 of the Act it would (in my opinion) be our duty to hold that there had been no legal forfeiture

That section however provides that every declaration purporting to be made under the Act shall, as against all persons be conclusive evidence that the forfeiture therein referred to has taken place. The result is that though I hold the notification does not comply with the provisions of the Act, still we are (in my opinion) barred from questioning the legality of the forfeiture it purports to declare

This brings me to the question whether the pamphlet under discussion contains words of the nature described in section 4, sub-section (1)

The provisions of section 4 are very comprehensive, and its language is as wide as human ingenuity could make it. Indeed, it appears to me to embrace the whole range of varying degrees of assurance from certainty on the one side to the very limits of impossibility, on the other

It is difficult to see to what lengths the operation of this section might not be plausibly extended by an ingenious mind

They would certainly extend to writings that may even command approval.

An attack on that degraded section of the public which lives on the misery and shame of others would come within this wide-spread net, the praise of a class might not be free from risk. Much that is regarded as standard literature might undoubtedly be caught

It is however urged that even so this pamphlet is outside both the spirit and the words of the section. And now I will notice the argument that has been addressed to us as to this

The pamphlet, it is said, is an appeal to His Majesty's subjects, followers of Christian faith, and it is an appeal to them as Christians to move the British Government to such individual or collective action as will put a stop to outrages that shock all feelings of humanity, if they in fact occurred

And so, it is contended this is an appeal to the people of a Christian nation, just because they are a Christian nation, and thus would be the first to protest against the cruel disregard of the principles of its faith, by some who profess to be its adherents, and against acts so abominable as to have earned the scathing denunciation of the Christian Monarch of one of the allied nations. Nor does the argument rest there, for it is brought to our notice that the pamphlet contains passages which show

that Christianity as a creed is not attacked, notably that which states (page 28) that it "was ever the symbol of humanity and mercy", and that it states that those who were fighting under the cross betrayed it. It is true that it refers to Crusades (page 3) but this has reference not to any Crusade proclaimed by Christianity but to the proclamation of the King of Bulgaria. On the other hand, there are passages which expressly state that Turkish excesses are not condoned, which shew that the Christians are not attacked as such and narrate the protests made and help given by Christians other than the Balkan allies engaged in the war. There is no racial or political tie between the Balkan allies and the Christian subjects of His Majesty's in India which would make it possible that wrongs committed by the former should be considered imputable to the latter. Nor is there really any credal link because it is not suggested that the acts complained of were done in the name of and with the authority of Christianity but in betrayal of it. On the contrary, it is argued, the suppression of this pamphlet might tend in the Mussalman mind to band the Christians of the country with the authors of these wrongs and make it appear that it was desired that these should not be made public lest they might throw discredit on Christian subjects in India.

The pamphlet then, it is said, so far from bringing Englishmen or His Majesty's Christian subjects into hatred or contempt is the highest compliment that could be paid to them,

This is the argument and it may be a very forcible one when addressed to those who can be swayed by it. The executive Government can be moved by such reflections, our investigation is of a more prosaic order.

The Advocate General has admitted, and I think very properly, that the pamphlet is not seditious and does not offend against any provision of the criminal law of India.

But he has contended, and rightly in my opinion, that the provisions of the Press Act extend far beyond the criminal law, and he has argued that the burden of proof is cast on the applicant, so that however meritorious the pamphlet may be, still if the applicant cannot establish the negative the Act requires, his application must fail.

And what is this negative. It is not enough for the applicant to show that the words of the pamphlet are not likely to bring into hatred or contempt any class or section of His Majesty's subjects in British India, or that they have not a tendency in fact to bring about that result. But he must go further, and show that it is impossible for them to have that tendency either directly or indirectly, and whether by way of inference suggestion, allusion, metaphor or implication. Nor is that all, for we find that the Legislature has added to this the all embracing phrase "or otherwise."

And here I may, not inappropriately, invite attention to section 153A of the Penal Code which has such affinity to the statutory provision governing this case, that it may be regarded as its basis. That section was added to the Penal Code in 1898, and was directed against the promotion and attempts to promote feelings of enmity or hatred between different classes.

It will be noticed that the feeling here described is one of enmity or hatred no provision is made for contempt. But the more important divergence is that while the Penal Code requires that the enmity or hatred should be not only towards a class but by a class, there is no such limitation in the Press Act as to the source from which these hostile feelings should proceed, it aims against all hatred or contempt regardless of those by whom it is entertained. Nor is this the only direction in which there is a greater stringency in the Press Act. To section 153A there is appended an explanation which declares it not to be an offence to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce the feelings of enmity or hatred, indicated in the section. And yet no such qualifying words are to be found in section 4 of the Press Act, and this is the more remarkable because the qualifying explanation of section 124A are introduced, though they relate to an even graver offence.

It may be that this omission was an oversight, but whether that be so or not the Government insists on the absence of this explanation, though it leads to a curious result.

I think the Government is entitled to stand on the letter of the law though it deprives Mr Mohamed Ali of an opportunity of relying on an explanation conceived in the spirit of that which forms part of section 153A of the Penal Code.

Had the Press Act incorporated the explanation to section 153A, as it has that to section 124A, Mr Mohamed Ali might perhaps have made a very strong case in view of the Advocate-General's admission as to the character of the pamphlet and the applicant's purpose and intentions.

The applicant however contends strenuously that the pamphlet does not come even within these all-embracing terms of the Act, and that the Legislature aimed at something wholly different. The incalculable powers of forfeiture vested in the executive are a sure sign that the Act was called into being by urgent political necessity. And it is of sufficiently recent date to enable us all to remember that the mischief chiefly aimed at was the prevalence of political assassination and anarchical outrage. Comprehensive words were designedly used to catch crime and the incitement to crime posing in the guise of innocence.

The Act was directed against crime and aimed at its prevention. I doubt whether publication with an authorship, a source, and a purpose like those of the present pamphlet were thought of, and I recognise the force of the argument that the Act is now being applied to a purpose never intended. But be that so or not, if the Legislature has employed language wide enough to cover the pamphlet, this lack of reserve affords no answer to the forfeiture now attacked.

I have already dealt with one phase of the absence of grounds in the notification. This defect, and the Government's failure to place before us any materials beyond those furnished by the applicant have sensibly added to our difficulties in discharging the peculiar duties cast on us by the Act.

The notification does not even specify the classes that might be brought into hatred or contempt or which of these two diverse sentiments

is apprehended And so when Mr Norton rose to address the Court he had to seek this information from the Advocate-General.

The first answer implied that it included Christians, Greeks and Englishmen, but as under the Act the classes are limited to those composed of His Majesty's subjects in India, the Greeks were withdrawn and the first and the last retained Still the answer in its original form is not without its significance, though it was afterwards modified.

The pamphlet would doubtless bring into hatred the unchristian Christians whose deeds of atrocity are described. The theory presented is that the reflection of this hatred might fall, not indeed on the Government but on His Majesty's Christian and English subjects in British India, If this be the Government's view with all the information at its disposal, the Court, no more informed than the man in the street, cannot (in my opinion) affirm this could not be so, and affirm it with a degree of assurance that would entitle it to set aside a measure of safety on which the Government had solemnly resolved.

The Advocate General has convinced me that the Government's view of this piece of legislation is correct, and that the High Court's power of intervention is the narrowest - its power to pronounce on the legality of the forfeiture by reason of failure to observe the mandatory conditions of the act is barred the ability to pronounce on the wisdom of the executive order is withheld and its functions are limited to considering whether the applicant to it has discharged the almost hopeless task of establishing that his pamphlet does not contain words which fall within the all comprehensive provision of the Act I describe it as an almost hopeless task, because the terms of section 4 are so wide that it is scarcely conceivable that any publication would attract the notice of the Government in this connection to which some provision of that section might not "directly or indirectly whether by inference suggestion, allusion, metaphor, implication or otherwise apply".

I have said that the ability to pronounce on the wisdom or unwisdom of executive action has been withheld There was good reason for this Courts of law can only move on defined lines and act on information brought before them under limited conditions

It is not so with the executive authority It would be paralysed if it had to observe the restrictions placed on the Courts.

Its action can be prompted by information derived from sources not open to the Courts, and based on considerations forbidden to them, it can be moved by impressions and personal experiences to which no expression can be given in a Court, but which may be a very potent incentive to executive action

The Government may be in possession of information which it would be impossible to disclose in a Court of law, and yet obviously requiring immediate action.

Therefore a jurisdiction to pronounce on the wisdom or unwisdom of executive action has been withheld and rightly withheld It may be a question whether even the semblance which this Act provides should not have been withheld as it was by Act 1X of 1878

Political considerations and reasons of State are the life-blood of executive action, but they have no place in a Court of law. The "constitution" said Lord Mansfield, "does not allow reasons of State to influence our judgement. God forbid it should—we must not regard political consequences how formidable soever they might be if rebellion was the certain consequence we are bound to say, *Frat justitiam ruat coelum*," [case of *John Wilkes*]

The fact is that the executive and judicial authorities stand on wholly different planes for the purpose of arriving at a decision as to the propriety of executive action. And the one cannot sit in judgment on the determinations of the other. *Se judicas, cognosce, si regnas, jube*

And what then is the conclusion of the whole matter, of the two alleged checks on executive action, supposed to be furnished by the Act, one, the intervention of Courts, is ineffectual, while the other, for this very reason, can be, and in this case, has been disregarded, without impairing the practical effect of a forfeiture purporting to be under the Act.

One word more, and that is as to the motive of the present application. The applicant, Mr Mahomed Ali, is by no means unknown in India, he is a journalist of position and repute.

Though he is not an accused, he tells us that he regards himself as under the stigma which (he declares) must attach to any journalist who has come under the operation of an Act directed, primarily at any rate against a criminal movement marked by outrages which so shocked the public sentiment as to call for this drastic legislation. But even if he has not succeeded in proving the negative that fate and the law have thrown in his way, at least his application has not been wholly in vain.

The Advocate-General representing the Government, has publicly announced, that Mr Mahomed Ali's forfeited pamphlet is not, in his opinion, a seditious libel, and indeed that he attributes no criminal offence to Mr Mahomed Ali. He was even willing to concede and believe he was acting in the highest interests of humanity and civilization. In this I think the Advocate-General made no admission which it was not proper for him to make.

Mr Mahomed Ali then has lost his book, but retains his character, and he is free from the stigma that he apprehended, and this doubtless will be some consolation to him when we dismiss, as we must, his present application. I think there should be no order as to cost.

STEPHEN J.—I agree with the Chief Justice that this application must be dismissed. In view however of its novelty, and of the difficulties to which it gives rise, I consider that I should express my own view of the questions involved. If we take advantage of the statement made by the Advocate General that the classes whom it is alleged the pamphlet before us is likely to bring into hatred are Englishmen and Christians, and confine our attention to the parts of the Press Act that apply to the present case, the position we are in may be correctly described as follows —

It appeared to the Local Government that the pamphlet before us contained words that were likely directly, indirectly or (to abbreviate) in any possible way, to bring Englishmen or Christians being His Majesty's subjects in British India, into hatred as a class. They accordingly published

a notification in the Local Gazette declaring the pamphlet forfeited, and giving as a ground of their opinion that the pamphlet was likely to bring Englishmen and Christians into hatred, the fact that it was likely to bring them into hatred. The result of this notification was that the police in Calcutta confiscated the pamphlet, and Mr Mahomed Ali now applies before us to set aside the confiscation on the ground that the pamphlet is not likely to bring such Englishmen and Christians as have been described into hatred, and it is this negative proposition that Mr Norton seeks to prove on his behalf.

The case he makes before us is twofold. In the first place he says that the pamphlet cannot have the effect ascribed to it. In the second he says that the notification published by the Government is bad because it does not state the grounds of the opinion that the Government have formed about the pamphlet, which it must do according to section 12, that therefore the confiscation is illegal, and there is no ground for the application he is making. He naturally presses for a decision on the first ground, but, if he cannot obtain that, he asks for a declaration that the notification and the confiscation are both bad.

Logically however the question of our jurisdiction must be considered first. As to this I am of opinion that the notification is not according to law. Looking at the section, and indeed at the Act as a whole, I have no doubt that the provision in section 12 that the grounds of the opinion on which the Local Government have acted must be stated, is mandatory and not merely directory. There can be no doubt that it is framed for the protection of any person whose property may be confiscated, and not merely for purposes of administrative convenience. The ground of an opinion must in this case, if not always, be a fact or facts, and no fact is disclosed merely by specific relations of the elements that the law requires to be present in order for legal consequences to follow. I have already described the statement of the grounds in terms which seem to me to lead to an absurdity, but I have taken pains to make them correct. I cannot say what facts should be stated. I do not think, for example, that it can be the case that the Local Government should state to us all the information on which they have acted, for I cannot suppose that we are to revise their action as a whole. On the other hand we have it appears, power to revise their action to some extent, and for this purpose some statement of fact seems essential.

But because the law has not been followed in this matter, I cannot hold that the notification is void in such a way as to deprive us of jurisdiction. For, such are the provisions of this Act, that if our jurisdiction to revise the action of the Government under section 17 is taken away, no other remedy is open to the person whose property is confiscated, and the Local Government can by their own laches deprive him of the only relief that the law provides. Such a conclusion seems to me so contrary to all principles of justice that I cannot accept it or apply to the present case the general principle that where exceptional powers are conferred on an executive authority and a special procedure for their exercise is provided, a failure to follow that procedure will prevent an exercise of those powers. Also, though I cannot say what facts are to be stated in order to disclose the ground for the opinion on which the Local Government acts, I think it may be the case that a statement of facts too meagre to

give an applicant under section 17 any real assistance, would be sufficient to satisfy the requirements of section 12. Further our jurisdiction is very closely confined by the terms of section 19, with which section 17 and 22 must be read, and I have doubts whether it may not be that we can only answer the question indicated in section 17, assuming that everything else has been rightly done.

I am of opinion, therefore, that we have jurisdiction to consider the question before us on its merits, and it is my duty therefore to do so. It is impossible however to do this without first noticing the point of view from which Mr. Norton has asked us to consider the case. He did not contend that this Act was penal, but he dwelt at length on the intentions of the persons who wrote the pamphlet, apparently in Constantinople, and of the applicant who as I understand published it, or at least proposed to publish it here. With these I conceive that we have nothing to do directly, we have only to consider what effect the publication is likely to produce. The intentions of the writers and publisher may be of importance on the principle that they are not likely to produce an effect they did not intend but otherwise we need not consider them. Nor can I accede to the argument that this Act was passed only to prevent active crime. I can only judge of its purpose from its contents, and as I read it, its purpose is to prevent the publication of anything that may be dangerous in any of the ways described in section 4, and the means supplied to Government for doing this have no relation to the propriety of the conduct, still less to the criminality, of the publisher or the readers. The purpose of the Act as I read it may be to prevent crime not by detecting or punishing criminals, but by preventing persons now innocent from becoming criminals. Consequently I need scarcely say that I consider that no slur has been cast on Mr. Mahomed's character by the confiscation of his pamphlet. A man may own a mad dog without blame, and no slur is cast on his character if it is confiscated.

This view is in my opinion confirmed by a reference to the provisions of the Penal Code that deal with cognate matters. By section 153A of that Code, it is an offence to promote feelings of enmity between different classes of His Majesty's subjects, but it is explained that it is not an offence to point out without malicious intentions, and with an honest view to their removal, matters which are producing or have a tendency to produce such feelings of hatred. Thus when the law is dealing with the matter of creating hatred of a class from the point of view of the criminal law, its action is restricted to cases where what is promoted is hatred by one class of another, and words and so forth used without malice and honestly to remove the causes of hatred are not punishable. But in the present case the law applies to hatred by any one, possibly only by one man and the explanation as to the intention of the person who used them is omitted. It seems that the Legislature must have had section 153A in view when it enacted section 4(c) of the Press Act, and I therefore suppose that the omission in the latter of any provision like the explanation in the former was intentional. Again Explanation II of section 4 (f) of the Press Act excludes from the scope of the Act "comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, or of the administration or other action of the Government without exciting or attempting to excite hatred." This is

obviously adopted from two explanations to section 124A of the Penal Code, which are applicable here, because if hatred is in fact excited the explanation does not apply, whatever may have been the intention of the person who excited it

From the relation of this Act to the Penal Code, I conclude that the scope of this Act has been made far wider than that of the Code. So wide indeed are the powers that the Legislature has conferred on the Government that they would be able to confiscate a newspaper containing words that might cause one man to hate, or even to condemn, a class, if such there should unhappily be, who sought to embarrass the Government of the country by murder and robbery. When such wide powers were conferred on Government, I cannot but suppose that it was intended that they should be widely used.

This brings me to the actual question that I conceive that I have to decide, namely, whether Mr Norton has shown that the pamphlet before us is not likely to bring Englishmen and Christians into hatred. And in attempting to form an opinion on it, I find myself in a position which is unfamiliar to me, and in which, as far as I am aware, no Judge in the British Empire has been placed, since the remote days of early English Jurisprudence. I have to decide a question of fact on such evidence as is supplied by one document. The side on whom the onus of proving his case is cast is not in a position to give any evidence. As the other side has not called any witnesses, no cross-examination has taken place.

The answer to the question I have to decide depends on the social and political state of the Mohammedans in India, or perhaps of certain sections of them. As to this such information that I have is unverified and general to a high degree, it has never been my duty to acquire information on the matter, and absolutely none has been supplied to me on this occasion. Under these circumstances I have no doubt that any opinion I may express will be received by others with the respect that is due to the office I have the honour to hold; but it will be impossible for me to share in this feeling. The question put to us is so framed that any doubtful point is to be decided against the applicant.

Coming to the pamphlet itself I have no doubt that I must answer the question before me against the applicant. Generally speaking I suppose from its contents that it is the work of avowed partisans of the Turks in their war against the Christian Balkan States. The object of the writers, and here their intention becomes relevant, is to put an end to horrible atrocities which they allege to have been committed by the allies on Mohammedans. To do this they tell Englishmen what is being done by their fellow Christians and appeal to them, as Christians, to stop it. In more detail I find statements that the Moslem population of Macedonia is being practically annihilated by murder, outrage and pillage, if this passes unnoticed and uncondemned there will be a cleavage between Mohammedans and English. Then follows a series of charges of misgovernment and a catalogue of horrible outrages, the detail of which I may pass over, but all of which, I think I am correct in saying, are represented as having been perpetrated by Christians. In conclusion the readers of the pamphlet are informed that the Government of England will do nothing to stop the outrages unless forced to by public opinion, and it is stated that they can stop them if they will. Throughout the

whole of the pamphlet the outrages mentioned are imputed to the Allies whose Christianity is constantly referred to. There are cases in which accounts are given of how Christians tried to prevent or mitigate what was going on, but the almost avowed object of the pamphlet is to excite the indignation of Christians in England against the conduct of Christians in Macedonia so as to induce them to bring it to an end.

The disinterested humanity of the writers is beyond question, and they certainly have right to make an appeal to Englishmen as they did. Mr Mohamed Ali is entitled to a presumption that he acted with like humanity, and it is not suggested that he committed any unlawful act or did anything wrong in publishing the pamphlet in India. But these considerations do not touch the question whether the pamphlet is not likely to make Mohammedans hate Christians. A perusal of the accounts of the outrages is likely to excite anger in the mind of any reader who does not regard the pamphlet as a false document, which we have no reason for doing. I can well understand that in the mind of some Indian Mohammedans anger might easily and perhaps justifiably turn to a hatred of the Allies, from which, making allowances for the infirmities of human nature, a hatred of the co-religionists of the Allies would seem but a short step especially for those whose co-religionists are involved in a national disaster.

Such is my opinion on the question I have to answer. Acting on such information as I have, I entertain no doubt as to what my answer should be. But the absence of doubt is probably largely due to the absence of evidence, and cannot be taken as going far towards showing that the opinion is correct.

I agree that costs should not be awarded in this case.

WOODROFFE, J —I agree with the judgment of the Chief Justice.

Proceedings of the Council of the Governor-General of India for making Laws and Regulations held on Friday, the 9th January 1914.

Resolution for Amendment of the Press Act

The Hon'ble Mr. Banerjee said —Sir, my Resolution refers to the Press Act of 1910 known as Act I of that year. I have no desire to revive the memories of a controversy now passed and I hope forgotten, but it is useless to disguise the fact that the Bill was passed amid some opposition in this Council and considerable opposition in the country. Reading through the reports of the debate which took place in February, 1910, I find that there was a general desire evinced by the non-official Indian Members that it should be a temporary measure and should not find a place among the permanent statutes of the land. That view, however, did not commend itself to the majority and the Act has been added to the stock of our permanent legislation. Sir, the Act has now been in operation for a period close upon four years, and we are in a position to judge of its character. How it has worked, what are its defects and how they may be remedied—these seem to me, Sir, to be pertinent and relevant issues. They force upon our minds the conviction that the Act should be

repealed, or, at any rate, should be modified, and that, if it is to be modified, it should be at least upon the lines of the suggestions contained in my Resolution. That, Sir, represents what I may describe as the 'irreducible minimum' which the opinion of the educated community demands, as the first definite step towards what they hope will lead to the final annulment of this Act. Sir, that this Act is bound to be repealed sooner or later—sooner I hope than later—is as clear as the noon-day sun, for it is inconsistent with the great traditions of British rule and those noble principles of government which are incarnated in British administration. No concession to popular freedom has been made by the British Government in India which has ever been withdrawn. The Jury Notification was cancelled, the Vernacular Press Act was repealed, and so will it be with this Act in the fulness of time. I submit, Sir, that the Government of India standing at the head of the nation, becoming every day more and more nationalistic in its views by the breadth and liberality of its policy, ought to show us the way. Sir, the Act gives very large powers to the police. Under the provisions of section 8 of the Act, the magistrate is empowered to ask the publisher or printer of a newspaper, when he applies for registration, to find security. This power is exercised practically by the police. The magistrate in this case is the police and the police is the Criminal Investigation Department. Only the other day, in the case of the *Habul Matin*, a Persian Journal published in Calcutta, it was not the Local Government but the magistrate which demanded security at the instance of the Commissioner of Police. That surely was not the intention of the original framers of the Act. The interposition of the magistrate meant the exercise of judicial discretion and was intended to be a safeguard against the aberrations of executive authority. One of the greatest anomalies of the Act is that whereas a right is given to the aggrieved party to make an appeal against an order of forfeiture, no such right is allowed when the order for deposit of security is given, and the High Court has recently held in the case to which I have referred that even its revisional powers are not available in a case of this kind. Sir, thus in the absence of any safeguard of this kind, the result has been that many newspapers which were called upon to find security have ceased publication. I hold in my hand a statement giving the names of some of the newspapers thus dealt with. I find 17 newspapers were asked to give security. Of these 3 were Hindu papers and 14 Mohammedan, and not having been able to give security, they all ceased publication. The case of one of these papers, the *Ahli Hadis* of Amritsar, is very peculiar. It published a letter replying to certain strictures which had appeared in a Missionary organ reflecting upon the Mohammedan faith. This newspaper was asked to furnish security, but it does not appear that the book which published the strictures upon the Mohammedan faith was at all taken notice of. Then, Sir, passing from the papers which ceased to exist, we have a number of those which gave the security. The number according to the list which I have in my hand is 15—9 Mohammedan, 4 Hindu, 1 Sikh and 1 Anglo-Indian. The case of the *Zamindar* of Lahore calls for notice. It has been required to give security to the extent of Rs 10,000. The head and front of its offence was that it protested against the removal of a mosque. The justice of the complaint was admitted, the mosque was restored, but in consequence of certain remarks which it made against the respected head of the Government of the United Provinces, the

paper was asked to give a security of Rs 10,000. I will say this at once, that I have seen these remarks, I deplore them, I consider them to be very discourteous, very disrespectful, very objectionable, but at the same time, it seems to me that it would have been quite worthy of a great Government, if instead of demanding security to the extent of Rs 10,000, the Editor was sent for and sharply reprimanded. There is one other case to which I want to refer. Amongst those that were required to give security, there was an Anglo-Indian newspaper named the *Cawnpore Herald*. Somewhere about the year 1912 an article called 'A Dramatic Scene' appeared in that paper. The Deputy Superintendent of Police called upon the proprietress of the paper, and wanted to know who the writer was. Naturally enough, she declined to give the name. Then she called on the magistrate, the magistrate said that it was very improper on her part to permit her newspaper to be the means of criticism directed against the police and the municipality, and that she had no business to have the press moved about from place to place. The upshot of it all was that she was required to find security to the extent of Rs 500. She submitted a memorial to the Government of India somewhere about the year 1912. My information is that, up to this time, she has not received any reply of any kind.

Passing from these cases, let me note the vigour with which the Act has been worked under the different Governments. Through the courtesy of my hon'ble friend, the Home Secretary, I have been furnished with a statement. I find from it that for the three years during which the Act has been in operation, there have been 807 cases altogether dealt with under the Act. Of these, 239 were cases under sections 3 and 8, in which deposit of security was required, and the other cases were under section 12, in which certain publications and pamphlets were declared to be forfeited. If we take the figure 807 for three years, it comes to this, that there was an action taken almost every day of the year. This seems to me to indicate very great vigour on the part of the different departments superintending the operation of this Act. All this indicates the urgent need there is for the supervision of public opinion over the operation of this Act.

Passing from facts, let me come to the authoritative expression of opinion. I will not refer to the popular verdict, for that may not commend itself to gentlemen on the other side of the House, but I will cite an authority of unquestioned weight; whose pronouncement, I am sure, will command the implicit acquiescence of all members, be they official or non-official. Let me the quote opinion of the Chief Justice of the High Court of Bengal when delivering judgment in the *Comrade* case. This is what Sir Lawrence Jenkins said:—

The provisions of section 4 are very comprehensive, and its language is as wide as human ingenuity could make it. Indeed, it appears to me to embrace the whole range of varying degrees of assurance from certainty on the one side to the very limits of impossibility on the other. It is difficult to see to what lengths the operation of this section may not plausibly be extended by an ingenious mind. They would certainly extend to writings that may even command approval. An attack on that degraded section of the public which lives on the misery and shame of others would come within this widespread net, the praise of a class might not be free from the risk. Much that is regarded as standard literature could undoubtedly be caught.

That is the Chief Justice's opinion about section 4 of the Act. Sir, my Resolution does not cover it at all. It is a very modest one. I

ask, is it possible to conceive of a condemnation of any measure more restrained in its tone yet more emphatic in its reference? A law so dangerously comprehensive in its scope naturally needs many safeguards for its proper working. The Government of India recognised the necessity of such safeguards and wisely provided them. The Hon'ble Mr Sinha, late Law Member to the Government of India, speaking from his place in this Council, speaking on behalf of the Government of India, referred to these safeguards in clear and explicit terms. I will read an extract from his speech. He said —

It is of no use to attempt to convince us that it is a very drastic measure, because we have put in all kinds of safeguards. I will mention another which my Hon'ble friends seem to have forgotten in their hasty perusal of the Bill. When the Local Government makes the order of forfeiture the Bill provides that it must state or describe the offending words, or articles, or pictures, or engravings, or whatever it is, upon which it bases its order. No making an order which is vague, which is indefinite. No order without allowing the man to know what he is being punished for, but a definite order stating the very words of the article or describing it as that which the man is being punished for. Is that not a safeguard? Apart from the Tribunal of Appeal, is it not a safeguard to provide that a man will not have his security forfeited without being told exactly what he has written that is taken exception to.

I think, Sir, there could not be a clearer exposition of the intentions of the Government in regard to this matter, and I understand that Mr Sinha's speech on that occasion was endorsed whole-heartedly by the then Viceroy, Lord Minto. The question is whether these safeguards have been effectually provided, whether the promises then made have been redeemed. Let us examine the matter a little. Section 4 of the Act lays down that when a Local Government has decided to forfeit any deposit in respect of a printing press, it has to issue a notice in writing stating the grounds of the forfeiture—the words, signs, visible representations, to which exception is taken. Section 6 lays down that when a deposit has been made and the Government decides again to forfeit the deposit in consequence of the contravention of the terms of section 4, a notice is to be issued in writing again stating the grounds for the forfeiture. This is as regards printing presses. The same provisions *mutatis mutandis* apply to newspapers. Therefore it comes to this, that wherever a Local Government is invested with the right to forfeit a newspaper or a printing press, the obligation is cast on the Government to state the grounds for the forfeiture. But, Sir, unfortunately, all this is annulled by the provisions of section 22, that at any rate is the opinion of the High Court. It is necessary for me to read section 22. That section declares —

Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture thereon referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on such application as aforesaid, and no civil or criminal proceedings, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.

This is the opinion of the Chief Justice in regard to this section —

The notification therefore appears to me to be defective in a material particular and, but for section 22 of the Act, it would, in my opinion, be our duty to hold that there had been no legal forfeiture.

That section, however, provides that every declaration purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture thereon referred to has taken place. The result is that though I hold that the notification does not comply with the provisions of the Act, still we are, in my opinion, barred from questioning the legality of the forfeiture it purports to declare,

Is it possible to hold in the face of this clear expression of opinion that the safeguards which were promised by the Hon'ble Mr Sinha have been provided? Be it observed that these pledges were given in order to allay the great public excitement that was caused by the enactment of so drastic a law as the Press Act. What was given with the one hand is practically taken away with the other. This was not, this could not have been, the intention of the Government of India, for apart from its high-mindedness, and even its sternest critics must give it credit for that, there is internal evidence to show the anxiety of the Government of India to incorporate in the Act the declaration of Mr. Sinha, and section after section reproduces the safeguards promised by him. But all of a sudden they are nullified by the provisions of section 22. It seems to me that there must have been some error, some mistake in the drafting. I am confirmed in this view by an examination of the Act. Section 17 gives the aggrieved party a right of appeal to the High Court, that however becomes nugatory and meaningless if the aggrieved party is not furnished with materials on which the High Court is to form its judgment, or the High Court is barred from considering these materials for the purposes of reviewing the decision of the executive authority concerned. It is preposterous to suppose that the Act deliberately nullifies in one part what it has deliberately conceded in another, or that it has thrown an impossible burden of proof upon the aggrieved party. I will quote the opinion of the Hon'ble the Chief Justice —

The Advocate General has admitted, and I think very properly, that the pamphlet (that is the 'Comrade') is not seditious and does not offend against any provision of the criminal law of India. But he has contended, and rightly in my opinion, that the provisions of the Press Act extend far beyond the criminal law, and he has argued that the burden of proof, is cast on the applicant, so that, however meritorious the pamphlet may be, still if the applicant cannot establish the negative the Act requires, his application must fail.

And what is this negative? It is not enough for the applicant to show that the words of the pamphlet are not likely to bring into hatred or contempt any class or section of His Majesty's subjects in British India, or that they have not a tendency in fact to bring about that result. But he must go further, and show that it is impossible for them to have that tendency either directly or indirectly, and whether by way of inference, suggestion, allusion, metaphor or implication.

Well, Sir, it is impossible for any person to prove a negative, and the difficulty of the task is enhanced by the comprehensive nature of the obligation of proof that is cast upon him.

The second part of my Resolution follows as a matter of course from the first. It is no use placing materials before the High Court for a review, if the High Court is debarred from considering these materials. The High Court says that it is debarred. Therefore I submit that section 22 ought to be amended in order definitely to empower the High Court to set aside any order not made in conformity with the provisions of sections 4, 6, 9, 11 and 12. It may perhaps be held that the first portion of the Resolution is a surplusage, that it is already the law, and that therefore no amendment is necessary. If this contention holds good, it constitutes an overwhelming argument in favour of the amendment of section 22 in accordance with my suggestion. If it is already provided in the Act that the ground of the forfeiture must be set forth in the notes of forfeiture, you are bound to make the law operative and to give it effect. Therefore you must modify section 22 upon the lines suggested by me.

Sir, it is admitted on all hands that there has been a sensible improvement in the situation, the highest authorities in the realm have borne testimony to this effect. It is also admitted that there has been a change for the better in the tone and temper of the press. Our critics hostile to our interests and aspirations have ungrudgingly admitted the act, that being so, I feel that I should be justified in demanding the repeal or, at any rate, a substantial modification of the Act, but I go no further than to invite the Council so to amend the Act as to remove a just cause for complaint, to carry out its declared intention and to redeem the pledged word of the Government. In making this appeal I speak not only as a Member of this Council but as one with whom journalism has been the cherished vocation of his life. We journalists feel as if the sword of Damocles was hanging over our heads. We may be right or we may be wrong, but that is our feeling. Ours is a noble calling and we are entitled to the whole-hearted support and sympathy of the Government. The newspaper press is the great organ for the ventilation of popular grievances, it is the safety valve of the State, it is an instrument of popular and political education, it is the gift of British rule and we cherish it with affectionate ardour. Its liberty may degenerate into licence, but I venture to hold that the arm of the law, such as it is without being reinforced by the Press Act, is long enough to reach it and strong enough to deal with it. The amendment of the Press Act which I pray for—and after all it is not an amendment but is in entire conformity with the intentions of the framers of the Act—will, if accepted, go some way to soften the rigours of the law and remove a just source of anxiety and of uneasiness felt by the great body of Indian journalists, and above all, Sir, it will proclaim to the world the unalterable determination of the Government to redeem its pledged word and to make justice to the aggrieved party the keynote of its policy, even when enforcing a measure of some severity, deemed necessary by the Government in the supreme interests of the State.

With these words, Sir, I beg to move the Resolution that stands against my name, namely —

That this Council recommends to the Governor General in Council that an amendment of the Press Act of 1910 be introduced in the Imperial Legislative Council so as to provide that when any order of forfeiture is made under the Act, the order must state or describe the offending words or articles or pictures or engravings or whatever it is upon which the Local Government bases its order, and that section 22 of the Act be so modified as to definitely empower the High Court to set aside an order of forfeiture not made in conformity with the provisions of sections 4, 6, 9, 11 and 12 of the Act.

The Hon'ble Malik Umar Hyat Khan — Sir, I am the greatest enemy of the seditious Press and had I had the power, I would have never allowed this resolution to be moved and discussed here to-day, or, I would have asked to move a counter-resolution for making the Press Act more stringent than it is now. On the 6th instant, I spoke on this subject and I also emphasised the necessity of making this law more effective in my last year's Budget Speech when there were no signs of this resolution being discussed here. An unbridled Press is the greatest curse of India, and there has never been a more appropriate and more useful Act passed in this Council than the Press Act with the exception of two others the Seditious Meetings Act and the Conspiracy Act—which constitute its part and parcel and which are calculated to strike a blow at and suppress anarchism and seditious propaganda organised or non organised. I think that it is the seditious Press which lies at the root

of the other two. It is papers or other seditious pamphlets which poison unsteady persons and result in engendering in their minds either conspiracy or an uncontrollable excitement. I need hardly mention the history of the time when the late lamented Sir Herbert Risley made his masterly speech enumerating various anarchical deeds which were committed, showing thereby urgent necessity of a new remedy against the outbreak of crime which had then taken place. There has not been a single discussion in this reformed Council on this subject in which I have not taken part because I feel that if such propaganda are not crushed with a strong hand serious danger will result in the future. If anything happens then on a very big scale the peace-loving subjects of His Majesty the King-Emperor would be the real sufferers and the irresponsible small set of sedition-mongers would gain money by setting the house of the poor on fire and witnessing the blaze from afar. I think this crime of seditious writing is far more serious than murder because in the former one kills another for personal grievances while in the latter there is danger of thousands of innocent men being killed who meant no harm to any one. Sedition is sure to set back not only the hands of the clock of advancement in India but it will so shatter the whole machinery as to break it in small bits. One of the political prisoners in Montgomery Jail was asked why he committed the crime. He replied that his mind was upset by reading articles in newspapers and pamphlets which led him to do this. When he was in prison and the whole thing over he had no motive for saying anything but truth and we can safely hold the press responsible for 97 per cent of crimes of this nature. We, the representatives of the Punjab, who come from martial classes by which the Punjab is mostly populated and from which a large number of His Majesty's soldiers are drawn, cannot possibly tolerate any weakness in the press as it will be allowing fire to be lit near a tank of petroleum which may be in the house we reside in. It may have been noticed that our worthy Lieutenant-Governor when opening the Council specially remarked about the mischief caused by presses of a certain class, and I am very glad to find that some steps were taken against some newspapers. Although the Punjab Government have determined to put a stop to such presses, yet there has been very little done in view of the leniency of the Press Act as it is in the present form. It hardly stands to reason that the Local Government should have to decide upon specific offending words or articles, etc., as laid down in the resolution which are seditious. There are many papers in which even one article cannot be determined upon to be seditious. It is the general tone pervading the paper throughout the year which is really responsible for influencing the trend of the mind of its readers against the authorities organised for the establishment of law and order to which we owe all the present progress which would further increase—were all obstacles such as the seditious press removed from the way, and, in my opinion, the declaration made by any Local Government of forfeiture of anything of a seditious kind should be conclusive. I have been advocating this cause ever since I had a voice. I first spoke in the Punjab Council before the present law was passed and again in the Imperial Council on various dates, as strongly as words could permit me. I cannot believe any one the real friend of India who exposes the poor peace-loving population, the lambs of India, to the attacks of the wolves of the Press.

Let us now turn to the other aspect of the question. Has the situation since been improved? The answer is surely and certainly in the

negative The period covering about a year's time, from the Delhi outrage to a recent occurrence at a police station in Bengal, is closely linked together by a series of occurrences, and goes to show that no leniency is required in any way at the present juncture To show weakness at a time when force is demanded would be disastrous and unsound policy. I think the Press Act as it now stands, is so weak as to be ineffective and unless the general tone of a paper is considered in determining its real character no satisfactory result would be achieved in the direction of repressing and stamping out crime It will have been seen how the friends of India were anxious to assist the Government in adequately coping with this wave of undesirable and obnoxious crime when the Conspiracy Bill was put to the vote The whole Council, official, and non-official, were on one side while the Hon'ble Mover of to-day with one faithful follower adhered like heroes to fight to the last when the position was really untenable I not only oppose this resolution as strongly as it lies in my power, but appeal to the Council that no leniency should be shown by the supreme Council to the disturbers of India's peace I take this opportunity to urge the Governor-General in Council to make the Press law more stringent and thus more effective With these few remarks I oppose this resolution

Sir, I think in every province the Lieutenant-Governor or Local Government is about the highest authority that there is, and perhaps an editor or any one who writes an article in a newspaper is not even known to him It is not possible that he would go against the writer unless he finds that he is so dangerous that he is disturbing the peace of the peace-loving population in that province, and we cannot for a moment think that any injustice would be done The High Court is no doubt a very big court but at the same time the Lieutenant Governor of a province is not an ordinary authority, and as he knows about the executive as well as the other side, I think he ought to be the highest authority in the province

The Hon'ble Maharaja Ranajit Sinha of Nashipur :—Sir, we all know under what circumstances the Government had recourse to such a piece of legislation as this in 1910 Mr Sinha, who was the Law Member then, explained the object for which the Government forced to bring forward this law and he also explained the situation then existing which necessitated the introduction of the Press Law which the country opposed very much at the time Sir, I am not in a position to say that the circumstances have so materially changed that we can safely demand, that the law should be repealed at this moment We all, specially I, coming from Bengal, cannot say that the circumstances under which this law had to be enacted no longer exist I think it is not at all safe that the Government should be divested of the powers of complete control over irresponsible writings of the press. I should also think that, as in this country the majority of the people form their opinion upon the writings of the newspapers, so the greatest responsibility lies upon the editors, and if they fail to discharge those duties, the Government should have power to put a stop to those writings.

At the same time, Sir, I find that my friend does not wish that the law shall be repealed, but he asks for an amendment of certain sections Under the Act itself the Government, in ordering forfeiture of deposits, is to state and describe the offending words, or articles, or pictures, or whatever it is, upon which the Local Government bases its order of

forfeiture The law already provides for this point and I do not see any reason why an amendment is necessary on that point, but my friend has explained that the Calcutta High Court has ruled that they are debarred from questioning the legality of the order of the Local Government on the point If such be the case, I think the ambiguity should be removed by an amendment

With these few words I beg to support only the latter part of the Resolution of my hon'ble friend on the right

The Hon'ble Mr. Qumrul Huda :—Sir, it must be in the recollection of some of us present here that the Press Bill of 1910 was passed into law under peculiar circumstances There was agitation in some of the important Provinces of India, and the Press Bill has created a sort of commotion and agitation over the Bill itself within the walls of the Council Chamber After reading the report of the speeches of that memorable debate on the Bill, one cannot fail to notice that the Government was not unaffected by these agitations It should be enough to prove the state of mind of the Government that they thought proper to push through the Council and to pass such an important Bill into law within three days No case was made out for this post haste procedure Persons possessed with the highest intellect and firmness of mind are liable to lose balance of reasoning when they are in hot haste With due respect to Sir Herbert Risley, the Honourable Member in charge of the Bill, I may be permitted to say that even a man of his calibre could not prove himself an exception His chief object appeared to be very careful of the bargain he was making on behalf of the Government. He knew for certain what precious privileges he was taking from the people of India, but he did not seem to care for the words of his promises which he offered to them instead He was fully aware of the fact that the Press Bill would not leave an atom of the freedom of Press to the people, and so he asked them to console themselves with the check provided in the Bill on the powers of the Local Governments This check consisted of the right of appeal to the High Court against the order of Local Governments He assured them of their right of appeal in these words —

So far I have dealt only with the powers of the Act I will now turn to the check I have provided This consists of an appeal to a special tribunal of three Judges of the High Court against any order of forfeiture passed by the Government If it appears to the High Court that the matter in respect of which the order was passed does not come within the terms of section 4 of the Bill then the High Court will set aside the order of forfeiture I think it will be admitted that this is a very complete check upon any hasty or improper action by a Local Government. We have therefore barred all other legal remedies

It is not difficult to guess that while Sir Herbert was uttering these words he had in his mind sections 18 and 22 of the Press Act Then this sacred assurance and promise of complete check was endorsed and supported by the Hon'ble Law Member of the time We believed in, and relied fully and completely on, the words of the responsible officers of the Crown But when the first appeal under the Act goes to the High Court of Calcutta we, to our amazement and disappointment, are told that the complete check promised to us and provided in the Act are words without meaning I need not quote the judgment of the Chief Justice of Bengal, as I presume that his interpretation of the law on the subject must be fresh in the minds of the majority of us in this Council, and some portions of it have just been read to us by the Hon'ble mover of the Resolution. This ruling of

the High Court should convince the Government as well, that the check it had placed on the hasty action of the Local Government, proved 'futile' instead of being complete as it was contemplated at the time of passing the Act. The Resolution we are discussing is nothing but a request to the Government to **rectify its unintentional error** in an Act which was passed in a hurry and **under peculiar circumstances**. Sir, pray do not give any one ground to think that the Government can err, that it does not possess courage enough to mend that error. Let it not come into the minds of the people that the Government in its assurances and promises plays upon words.

Sir, we cannot for a moment suppose that the Government ever says nothing to the people it does not mean. When we ask for an amendment of this Press Act, we demand that on the strength of the weighty words of Sir Herbert Risley. It was expected of the Government to come forward ere long, with a Bill to amend the Press Act of 1910. Sir, it was a matter of honour for the Government.

I think that both the people as well as the Government should be thankful to the Hon'ble Babu Surendra Nath Banerjee for moving this Resolution in the Council. It may remove the grievance of the people, and it has given a chance to the Government to extricate itself from the awkward position it has been placed in. For my own part, while thanking my Hon'ble friend for this Resolution, I cannot help telling him that the scope of it is too limited to remove many other flaws in the Act. With these few remarks I strongly support the Resolution.

The Hon'ble Mr. Rama Rayaningar :—Sir, the request embodied in the Resolution appears to be modest and reasonable. If the request were for a repeal of the Press Act, many of us would have no hesitation in saying that it is not yet time for such a request. But, as I understand, the request is to amend the law and to give effect to the express intention of Government. Sir, in the proceedings of this Council relating to the enactment of the Press Law, there is the statement of the then Hon'ble Home Member in charge of the Bill assuring the Council that provision is made in the Act for the right of appeal to the High Court when the order of the Government passed against the accused contravenes section 4 of the Act. The provision in the Act for the appeal, in order to be effective as a safeguard, will have to be modified by the amendment now proposed. Hon'ble Members are aware of what the Calcutta High Court said recently in disposing of Mohammed Ali's appeal. In this case, in spite of the fact that there is in the Act provision for the right of appeal, the High Court could not interfere with the order passed by the Government and therefore the appeal had to be dismissed. If the legislature really intended the provision to be effective and the High Court interprets it otherwise, we have to presume that there is some defect in the wording of the Act. And it is proper that this defect should be remedied by an amendment. Of course the defect must have been the result of some mistake. Government, I am sure, will not persist in the mistake when the mistake is pointed out. Persistence in mistake is against the principles of good government and assuredly it is against the enlightened policy of our benign Government. Sir, I therefore support the Resolution and hope that Government will see their way to modify the wording of the Act so as to bring the law

into conformity with the intention as expressed by Sir Herbert Risley in that masterly speech which my friend the Hon'ble Malik Umar Hyat Khan, has just referred to

The Hon'ble Mr Das :—Sir, the Resolution before the Council seeks an amendment of the Press Act of 1910. That Act was passed under peculiar circumstances. The readings of the political barometer at the time made it necessary. As to whether an amendment is necessary now or not is really the question before the Council. At the time when the Act was passed, the conditions which necessitated the passing of the Act were considered extraordinary, they were considered unusual. An unusual state of things demanded a peculiar piece of legislation suited to the time.

The figures cited by the Mover of the Resolution show that Government have found it necessary almost every day to exercise the powers reserved to Government under the Act with regard to newspapers only, for the Mover said that he had taken notice of 800 cases within a certain period, which on striking their average, gives more than one case per day. If that be the real state of things, what was considered an abnormal and unusual state of things at the time the Press Act was passed is now actually a normal state of things. On that ground, Sir, I think an amendment of the Act is necessary. If that be the right view, a thing which was considered usual at the time has developed into an evil which is to be permanent amongst us. So an amendment of the Act is necessary on that ground.

The Hon'ble gentleman who rose immediately after the Mover had sat down said that he would rather seek an amendment in order to make the provisions of the Act more stringent. Sir, on both sides the necessity of an amendment has been pressed. What really strikes one as a very difficult question—and yet it is a question in which the public are very much interested—is this, namely, whether the Act has been worded so as to give the people an idea as to what it is that is expected of them. The Act was interpreted by the learned Chief Justice of the Calcutta High Court in the case to which reference has been made by the Hon'ble Mover, and the Chief Justice pronounced it as full of ambiguities. I am very glad indeed that the learned Advocate-General, who represented the views of the Crown in that particular case, is present here. I mean the case of Mr. Mahomed Ali with regard to the publication of the pamphlet "Come over to Macedonia and help us"—that was the pamphlet which was being interpreted and discussed before the Chief Justice at the time. The learned Advocate-General then contended, and I have no doubt that his contention represents the views of Government. I have his words here—'the High Court's power of intervention is the narrowest, its power to pronounce on the legality of the forfeiture by reason of failure to observe the mandatory conditions of the Act is barred.' These are the words which I find in that judgment of the learned Chief Justice, that even in illegalities by reason of failure to observe the mandatory conditions of the Act the High Court's powers are barred.

Sir, I have always understood that the mandatory condition of an Act, especially when the conditions are conditions precedent to any action, or to any measure, or to any procedure, are a *sine qua non* to the validity and legality of what follows. But here we have a case where the mandatory conditions have been differently interpreted.

It is admitted that there are conditions of a mandatory character, and yet it is contended that the High Court's power to pronounce on the legality of the forfeiture, by reason of the failure to observe the mandatory conditions of the Act is barred. If they are to be all mandatory conditions, certainly they must be tested by those rules and canons of interpretation which have always been held to be applicable to mandatory conditions in all civilised countries. If we remove from the Act the mandatory condition (let us suppose for a moment that the mandatory conditions are removed) how does the Act stand? The Government's power is defined in section 4 as—'whenever any printing press is used for the purpose of printing or publishing any newspaper, book or other document, containing any words, signs or visible representations which are likely or may have a tendency directly or indirectly' and so on, 'notice is given to the keeper of such printing press stating or describing the words, signs or visible representations which in its opinion are of the nature described above'. Words to a similar effect recur in sections 9, 10 and 11. These words (if the mandatory conditions be omitted) will not find any place in the Act. What is left in the Act is the power of the Executive Government to order a forfeiture, and that power certainly is of an executive character. No doubt it is absolutely necessary that an Executive Government should possess powers which should stand beyond the power of a judicial court to criticise. If I remember aright the Learned Chief Justice in that very judgment says that the Executive Government may receive information from other sources than are open to the Law Courts and the Executive Government may be influenced by considerations which do not weigh at all before a High Court. It is quite open to the Executive Government to exercise its executive powers—such powers as it deems necessary for the better administration of the country, for the peace of the country and the preservation of law and order in the country. But at the same time when the Executive Government comes to the Legislative Council and introduces a piece of legislation with a view to arming itself with a power through the instrumentality of the Legislature, certainly that Act which gives the Executive Government its power must be interpreted according to the known rules and canons of interpretation which have been the result of ages of judicial decisions. The executive power of the Government in this case has been derived from a piece of legislation. It was quite open to the Government to exercise its power, such as it thought the conditions of the country demanded, without coming to the Legislative Council, but when the Executive Government, which takes the initiative in every piece of legislation, comes to the Legislative Department, and takes its arms from the armoury of legislature then certainly the provisions of the Act which arms the Government with the power must be interpreted according to accepted rules of interpretation and construction. Here we have a piece of legislation where power is given to the High Court to test the legality of an order issued by the Executive Government, and yet we find the Advocate General contending before the High Court that the power of the High Court to pronounce upon the legality of the forfeiture, by reason of the failure to observe the mandatory conditions of the Act, is barred. I know there have been conflicting decisions on this point in the different High Courts, as to whether the High Court has power or not to pronounce on the legality of the action of the Executive Government under this Act. If there has been any conflict of decision, I should say that is an additional reason for an amendment of the Act.

As to what should be the line of amendment it is not for me to suggest. If the Government thinks that it would be justified to reserve to itself absolute power—

The Hon'ble the Vice-President —I must ask the Hon'ble Member to resume his seat as he has exceeded his time limit.

The Hon'ble Mr. Kenrick :—Sir, as a member of the Select Committee on the press legislation of 1910, and as one who has had some practical experience of the working of the Press Act, I desire to offer a few observations in opposition to this Resolution. Every one acquainted with the provisions of the Act must admit of course, that the Act has placed—and advisedly placed—an extremely effective and powerful weapon in the hands of the executive. But those who are best informed are aware that this weapon has been wielded, and invariably wielded, with extreme moderation by the Executive in the many cases in which there has been unhappy necessity for using it. During the past four years since the Act has been in force, as was mentioned by the Hon'ble Mover, some 800 publications have been dealt with under the provisions of the Act. But the number of forfeitures—the number of cases in which forfeitures occurred—was comparatively few.

I may say that many, if not nearly all, of the cases in which publications were forfeited under the provisions of the Act were cases in which the writings were of the most flagrantly revolutionary nature, and it would, at any rate in my view, have been deplorable indeed if the law did not provide some summary and effective means of dealing with such literature.

The most complete answer to the proposed resolution for the amendment of the Act is the fact that during the whole period in which the Act has been in force for very nearly 4 years—3 years and 10 months as a matter of fact—during the whole of that period and with all the cases in which publications have been forfeited, which have come before the executive authorities and which have been dealt with by them under the Act, only one case (and that is the one to which the Hon'ble Mover has alluded) has been brought up before any of the High Courts in India so far as I am aware, and in that case the validity of the forfeiture was supported.

The Hon'ble Mover has urged, no doubt with the best of faith and in the sincerest belief, that the promises of safeguards made by the Hon'ble Mr Sinha on behalf of the Government when introducing the Bill have not been fulfilled. But the Hon'ble Mover is, as I shall show, mistaken in that respect. It is a fallacious and wholly misleading argument to quote words which were used by the Hon'ble Mr Sinha when discussing sections of the Act relating to the forfeiture of a printing press and to the forfeiture of security given by the owner of a press, I say that it is misleading and fallacious to quote those words and to divorce them from their context and impute them to Mr Sinha as being spoken by him in reference to a different section. By a different section I refer to section 12 which has a different scope, a different object, and a different subject-matter from those sections relating to the forfeiture of the press and forfeiture of security in relation to which the words were spoken.

Yet that has been the argument presented to this Council by the Hon'ble Mover. Upon those false premises the charge has been levelled by the Hon'ble Mover against the Government that they have failed to fulfil the promises which were then made on behalf of the Government by the Hon'ble Mr Sinha.

The Hon'ble Mr Banerjee :—I rise to a point of order. I never charged the Government with having failed to fulfil their promises. What I said was that there was an error in the matter of drafting and I submit that is very different and I beg that the Hon'ble Member will withdraw that remark.

The Hon'ble Mr Kenrick :—The Hon'ble Mover used the expression that 'the Government have failed to fulfil their pledges'.

The Hon'ble Mr Banerjee :—Yes, but the Hon'ble Member if you will permit me, Sir, has done exactly what he charges me with having done in respect of Mr Sinha, divorcing the whole context from that particular passage. The whole trend of my argument was that a mistake had been committed, and he must not pick out a particular sentence or a particular part of my speech and say that I meant to charge the Government with deliberately breaking its promise.

The Vice-President :—Mr Kenrick is in order and will continue his speech.

The Hon'ble Mr Kenrick :—I say that the Hon'ble Mover did more than suggest, he asserted that the Government had failed to redeem the pledges given on their behalf by the Hon'ble Mr. Sinha in his speech in Council. I say that that charge is without foundation. The safeguards which were promised were incorporated in the Act.

The proposed resolution asks for legislation to amend the Act by providing that 'when any order of forfeiture is made under the Act, the order must state or describe the offending words, or articles, or pictures, or engravings, or whatever it is, upon which the Local Government bases its order.' That is the first portion of the proposed amendment. But the safeguard which is there asked for is in fact already provided by certain sections of the Act, particularly by section 6 in the case of forfeiture of further security deposited by the proprietor of a press, also in the case of forfeiture of a printing press, and in the case of forfeiture of any publication where further security has been deposited under section 5. In all those cases, section 6 of the Act requires notice to be given in writing, stating the words, signs or visible representations which are held to offend against section 4. Now, those are the safeguards which were specifically referred to by the Hon'ble Mr Sinha in his speech in Council, and those safeguards have been provided. Precisely similar provisions have been inserted in sections 9 and 11 in cases where the Local Government exercises the power to declare the security deposited by a newspaper publisher forfeited, and also in cases of forfeiture of further security deposited on making a fresh declaration under the Press and Registration of Books Act, 1867. So that in all these various sections, what is now asked for in the proposed amendment is already law. I would ask Hon'ble Members to realise and recollect that

There only remains for consideration section 12 of the Act, which presumably was the one to which the Hon'ble Member has directed his attention in the remarks which he addressed to the Council. That, as I have already said, is a section which was passed with a different object, and it contains different subject-matter from that of the preceding sections. Section 12, I would point out to Hon'ble Members who happily are not acquainted in detail with the provisions of this Act, is not concerned in any way with any particular press or with any particular newspapers publishers or with the security given by any owner of a press. This section, section 12, gives power to order forfeiture of publications offending against section 4 wherever those publications are found. The provisions of section 12 meet the case of publications coming into India from abroad, and not only such publications, but publications wherever found the sources of which may be entirely unknown. The object of section 12 is to give power at once to deal with such matter of mischievous and evil tendency, and it follows that section 12 was advisedly drafted differently from the preceding sections. I may say, from my recollection of the debate on this Bill in 1910, that this section 12—and I should like to be corrected if I am in error, though my recollection is very clear—was passed without any resolution for amendment being proposed and without any division thereon. That is an important point to be considered and to be kept in mind, and this notwithstanding the fact that Hon'ble Members at the time were fully cognisant that this section differed in language and in the safeguards provided from those sections which were dealing with the forfeiture of a press or the forfeiture of a security given by a newspaper printer or publisher. Section 12 differs from the other sections by merely requiring the Government when forfeiting any publication to notify the grounds of opinion that the publication contains words or signs of the nature described in section 4.

Section 4 contains six clauses which prescribe the various grounds on which a publication may be forfeited. These clauses consist of several sub-heads and if the section is carefully read and analysed it will be seen that there are some thirty grounds on which a publication by means of its criminal and mischievous tendencies may be forfeited. Now, the Government in exercising their power of forfeiture under section 12, has always notified the particular ground in respect of which the matter comes within the section. In the notification of forfeiture of a particular pamphlet or paper it is invariably stated in respect of which particular ground of these thirty in the opinion of the Local Government the document offends. I say that to go further in cases under section 12 and actually to state or describe the offending words or articles in a public notification by Government, and that is what the Hon'ble Mover has urged upon the Council should be done—to state the actual words which formed the subject-matter of the forfeiture, would be merely to emphasize, to extend, to spread broadcast and perpetuate the very evil which section 12 is designed to suppress. It is intended as a summary means, an effective means, of suppressing offensive matter, and when I use the word 'offensive' I use it in the sense of matter which offends against the provisions of section 4, which, as I have said, are comprehensive.

Now, as to the quotations from the judgment of the Hon'ble and learned Chief Justice of Bengal, while according it the highest respect, I

an entitled to say that in so far as the Chief Justice has gone beyond the facts of the particular case that he was deciding his remarks amount to mere *obiter dicta*. The decision on the case amounts to this, that the forfeiture in the particular instance which was submitted to the Court was valid in law. Anyone whose misfortune it was to examine the proscribed pamphlet in that case, with its gruesome and revolting illustrations, could not have any doubt that the power of forfeiture vested in the Executive was, in that particular instance, properly and wisely exercised in the public interest. Notwithstanding that judgment and its *dicta*, I have no hesitation in expressing this opinion, and I do so with a full sense of responsibility. I say that if for the purpose of argument we assume in any individual instance an arbitrary exercise by the Executive of the powers vested in them by the forfeiture of a publication which all reasonable men would agree in holding to be innocuous, innocent, free from any mischievous tendency, on that assumption and in such a case, the special Bench of the High Court would have full power under section 19 to hold that the publication did not come within the provisions of section 4. I say without doubt that the Court would set aside, and properly set aside, the forfeiture. The provisions contained in section 19 of the Act, therefore, do contain reasonable protection against any arbitrary act of forfeiture under section 12 by the Executive. That no advantage has been taken of these provisions except in one case, and then unsuccessfully, demonstrates the absence of any arbitrary action on the part of the Executive.

For these reasons I confidently ask the Council to show by their votes that they regard the Press Act as a beneficial measure and one necessary in the public interests, as necessary now as it was at the time it was passed. I further ask Hon'ble Members to refuse to impair its practical value by any modification of its salutary provisions.

The Hon'ble Rai Sri Ram Bahadur—Sir, the motion before the Council is not for the removal of the Press Act from the Indian Statute-book. The motion made by the Hon'ble Mr Banerjee is simply this, that in the judgment given by the High Court of Bengal in the case of Mr Mahomed Ali section 22 of the Act has been interpreted in such a way as to weaken the safeguards provided in sections 4, 6, 9 and 11. These sections lay down that if in the opinion of the Local Government the forfeiture of the security or of the press appears necessary, then the notice which is to be given in writing must state or describe the particular words, signs, or visible representations. In other words, Sir, the grounds must be given on which the opinion of the Government is based. Section 22 as interpreted by the learned Chief Justice of Bengal, would not make the statement of the grounds on which the opinion is based mandatory, but to use his own words, 'a repetition of an opinion cannot be the grounds on which that opinion is based'. The object of the proposed amendment in that section 22 should be so modified as to be in conformity with the provisions of the preceding sections inserted to serve as safeguards, and, not to allow of the exercise of the powers given under the Act in an arbitrary way. The first portion of section 22 regarding which this Resolution is moved runs thus—

Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place.

That is the only point which has to be taken into consideration. The preceding sections prescribe that there should be a written notice by

the Government, and clearly lay down that that notice should state or describe the signs, words and visible representations which are considered objectionable by the Government. These sections would imply that the notice without such statement or description is incomplete and that their omission does not fulfil the conditions laid down in the Act. I think, therefore that the Resolution which my Hon'ble friend has moved, and especially its second part, is a sound one, and by amending the Act the Government would place section 22 in conformity with the preceding sections laying down necessary safeguards.

With these words, Sir, I support the Resolution.

The Hon'ble Khan Bahadur Mir Asad Ali Khan—Sir, the resolution before the House is a very important one. It concerns not one particular class but all classes of the Indian community. It neither asks for the repeal of the Press Act, nor attempts to introduce radical changes into the Act. The Hon'ble Mr. Banerjee makes but a modest request, and that, I suppose, in the light of a recent judgment of the Calcutta High Court. The first part of the resolution requires a clear statement or description of the offending words or articles or signs or visible representations within the meaning of the law, in all cases of forfeiture, and the second part requires a modification of the section 22 of the Press Act, so as to give real and definite powers to the High Court in dealing with forfeiture proceedings. Though certain sections of the Act provide in the earlier stages of forfeiture and before the application to the High Court that the Government should state or describe the offending words or signs or representations, one of the most important sections, namely, section 12, does not contain such a provision. In the absence of a statement or description of the offending words and even of a statement of the grounds that led to an action of forfeiture, no judicial authority, however high and competent it be can pronounce a judgment. The public are entitled to know the exact nature of the offence, when an order of forfeiture is made. Though section 12 provides that the Government should state the grounds of its opinion, it is rather strange and unfortunate that in a recent well-known case it has failed to do so. Referring to this obvious omission, the learned Chief Justice of Bengal observed in one of his judgments, the notification therefore appears to me to be defective in a material particular and but for section 22 of the Act it would in my opinion, be our duty to hold that there had been no legal forfeiture. If the offending words or signs or representations were stated or described, the Judges would have at least known the grounds of the action of the Executive. The observation of the Chief Justice brings me to the second part of the resolution, which is even more important than the first part. Elsewhere in his judgment, the Chief Justice says 'Together with this section (meaning thereby section 12) must be read section 22 by which with a qualified exception in favour of the High Court, all jurisdiction is in effect barred.' After this frank pronouncement by the highest judicial authority in the land, need it be said that the Press Act should forthwith be modified, so as to empower the High Court to deal with press prosecutions in an effective manner. But the Act, as it stands at present, is an instrument of unduly great power in the hands of the Executive, so much so that it makes the highest judicial tribunal feel their utter helplessness in the matter. Hence such small modifications in essential particulars as the Hon'ble Mr. Banerjee suggests

will bring the Act in conformity with the liberal principles of our Government. The exciting and critical times that demanded a stringent law are happily gone by, and the present peaceful times no longer require such a rigorous Press Act. It is perhaps not fully known how little is the operation of the present Act calculated to promote the free growth of an independent public opinion. With these words I heartily support the resolution, and trust that it will meet with the acceptance of this Council.

The Hon'ble Raja Kushal Pal Singh :—Sir, after the very able and exhaustive treatment which the subject matter of this resolution has received at the hands of the Hon'ble mover, I do not think I shall be justified in wasting the time of the Hon'ble Council by repeating what has already been stated by him. But the resolution is of such vital importance that I cannot give a silent vote in its favour. When the Press Bill was introduced into the Supreme Legislative Council, the country was assured by the then Law Member (Mr. S. P. Sinha) and Sir Herbert Risley that sufficient safeguards were provided in the Act to prevent an arbitrary exercise of authority by Local Governments. This assurance, however, falls to the ground under the interpretation put upon the Act by the special Bench of the Calcutta High Court, and a situation has arisen which calls for the amendment of the Act on the lines suggested in the Resolution before the Council. If the two checks against arbitrary action by Local Governments were intended to be introduced into the Act, and if it is now found that the checks furnished have proved utterly abortive it clearly behoves Government to take measures to revise the Act and bring it in conformity with the true purpose and intention of the Legislature. I think there ought to be no difficulty in amending the Act in such a manner as to make effectual the checks intended to be furnished, but not furnished, as a matter of fact, in the Press Act. With these few words I beg to support the resolution.

The Hon'ble Mr. V. R. Pandit :—Sir, the discussion which has proceeded upon the Resolution moved by the Hon'ble Mr. Banerjee has gone off at a tangent. The basis of the Resolution of Mr. Banerjee has been that there were assurances given in the course of the discussion that took place at the time that the Press Bill was passed into law in this Council that safeguards had been introduced in every case, whereas it has been found that those safeguards do not exist, and that, secondly, in order that the fullest effect should be given to the promises made at the time, such safeguards should now be introduced.

The question of importance in connection with the Press Act, which was raised in the case decided by the Calcutta High Court, was really one with regard to the very wide terms in which section 4 of the Act was couched. It has been pointed out by the learned Advocate-General, who sat upon the Select Committee of that Bill, that the terms of section 4 were advisedly made fully comprehensive. The Press Act was directed against the malevolent activities of persons ill-disposed towards Government, Law and Order, and in order to meet every form which those malevolent writings intended for circulation through the agency of the printing press might take, the Government had necessarily to secure preventive and punitive powers in adequately wide terms. The evil was undoubtedly rampant at the time and it was realised by all the

members, who spoke on that occasion that, as it was an evil which it was found necessary to meet, if due provision had to be made, it ought to be made in an effective manner. It is admitted on all hands that the provision has been made in an effective manner. It is true, as was pointed out at the time by my predecessor in this seat, that the wording of the Act threw the burden upon the person against whom an order of forfeiture was passed of proving the negative, namely, that the publication concerned did not come within section 4 of the Act, and it has been pointed out by the Calcutta High Court that it is a burden almost veiging on the impossible for any person to discharge, but that is all beside the point on the present occasion. The Resolution does not concern itself with section 4 of the Act, and I would deprecate on this occasion any discussion upon matters which are not really covered by the terms of the Resolution. The main point at present before the Council is that, although in certain sections of the Act provision has been made that the Local Government in forfeiting or passing an order in regard to forfeiture should state or describe the words, signs, pictures or anything else which has been taken exception to and which has led the Government to forfeit the Press or the newspaper. If the order does not specify these words, signs, or pictures, there is no provision in the Act to make that order illegal or liable to be set aside, for under the Press Act as it stands, the only power which has been given to the High Court to set aside an order of forfeiture is that contained in section 17 and 19 of the Act, and that power is confined only to the case where the High Court comes to the conclusion that the particular publication does not contain any words, signs or other things which would bring it within section 4 of the Act. Section 22 of the Act has been referred to in this connection as making the order conclusive against all persons. The main question which has given rise to the controversy is one with regard to an order of forfeiture passed under section 12 of the Act, and it has been pleaded in the course of the discussion that the wording of section 12 of the Act is, or was intended to be, uniform with that of section 6, 9 and other sections. As a matter of fact there is a very important difference between the wording of this section and the other sections, because in section 12 all that it is necessary for the order to specify is the ground upon which the opinion is based. This is different from the wording in the other sections, which require that the words, signs, or visible representations should be stated or described, and where in the same enactment different wording has been used, it is one of the accepted principles of construction that differences of intention must be ascribed and it must be held that the difference has advisedly been made. Now with regard to section 12, it has been laid down that—Where any newspaper, book or other document, wherever printed, appears to the Local Government to contain words, signs, or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notification in the Local official gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty, and thereupon any police officer may seize, and so on.

This therefore refers only to the newspaper or to the particular publication which has been ordered to be forfeited, and it is only fair to conclude that in connection with this section it was assumed that the injury

to be inflicted upon the particular person would be of an insignificant character as compared with the injury that would be inflicted in the case of the forfeiture of a press or forfeiture of a security or of a newspaper. This would only refer to a few cases and that would be in connection with a few copies of the particular publication. The cases that have arisen have mostly been of this description. I do not think that there have been many cases where any forfeiture of a press or forfeiture of security has been ordered, and section 12 does not confine itself only to publications by anonymous authors, and even where action is taken under the section where the authorship is known or the press which has published it is known, I suppose the Government has been actuated rather by the desire of stopping the evil than by that of causing an injury, which is peculiarly what is required in the particular circumstances of the case. The Government in acting under section 12 would really be acting in a lenient manner in connection with cases where the provisions of this Act have been transgressed. There is however this to be said that every right of property deserves to be respected. Whether it is only a few copies of books worth a hundred rupees or so, or whether it is the security for Rs 5,000 or Rs 10,000, or the press itself of considerable value, every person who owns property is entitled to have the grounds definitely stated to him because the provisions of this Act partake of the nature of a penal enactment. In the simplest criminal case the accused is entitled to be informed as to what the charge is against him, and similarly in a case like this I venture to think that justice requires that the person against whom an order of forfeiture is passed ought to be informed as to what it is that is taken exception to. No doubt it would be sometimes throwing a great burden upon a Local Administration to require the Local Administration to state all the extracts which have been objected to and show that it is not merely upon a pervading impression but upon some particular grounds that the Local Government is acting, and it should be quite possible and quite easy for it to give those extracts upon which the opinion is based which renders the publication liable to forfeiture.

It is on this ground and not on the ground of any promises made in Council at the time when the enactment was passed that I support the Resolution which has been brought forward to-day by Mr Banerjee. The speeches to which reference has been made, particularly that of the Hon'ble Mr Sinha, the late Law member, referred specially to the provisions of the Bill as it then stood, and by no stretch of language can it be said that when referring to the safeguards provided under the Bill, the Hon'ble Mr Sinha was referring not only to sections 6 and 9 but also to section 12 of the Bill as it then stood. I find also that the mere provision under section 12 of the Local Government being required to state or to describe the words, signs, etc., would not be of much avail because the Local Government having described any thing which it chose to treat as being open to objection as falling under section 2 of the Act, there would be absolutely nothing in the Act to warrant any other higher authority to object to that order and to set it aside, because under section 17 the order can only be set aside if in the publication there is absolutely nothing which could come under section 4 of the Act. The Resolution therefore, I am very sorry to say, does not help materially in improving the Act but it does help in drawing the attention of the Government to this anomaly with regard to section 12, and it is

from that point of view, in drawing the attention of the Government to that anomaly, that I support the Resolution

The Hon'ble Sir Reginald Craddock :—Sir, the Hon'ble Mover of this Resolution desires us to commend that the Press Act of 1910 be amended in such a way as to provide that when any order of forfeiture is made under the Act, the order must state or describe the offending words, etc, upon which the Local Government bases its orders. He also desires to amend section 22 so as to extend the powers of the High Court to set aside an order of forfeiture

To some extent some of the previous speakers have explained what the Hon'ble Mover did not make clear. He bases his proposals on securing a general similarity of procedure under the Act without actually specifying the section which would require to be amended to bring about that similarity. In effect the Hon'ble Member was urging that the procedure when a newspaper, book or document is forfeited under section 12 shall be similar to the procedure when a security or a press is forfeited, that is to say, that the wording used in section 12 should be assimilated to the wording of sections 4, 6, 9 and 11, notwithstanding that section 12 is totally different from those sections and that the language used is quite dissimilar. It has been made quite clear—

The Hon'ble Mr. Banerjee :—I rise to a point of order. I do not think I made that statement at all. I was trying to illustrate from the various sections that in every section where the Government has the power of confiscating a press or security, the obligation is also cast to state the ground of that order.

The Hon'ble the Vice-President :—The Hon'ble Member will have a chance of explaining his remarks in his reply, and it is undesirable to interrupt speakers more than is absolutely necessary.

The Hon'ble Sir Reginald Craddock :—I was explaining what the effect was of the amendments which are proposed by the Hon'ble Mover, and the only way the object of his Resolution could be carried out would be by the amendment of section 12, which section he did not specifically refer to. But I would like to explain a little more the differences between these sections. In the case of the four sections, 4, 6, 9 and 11, the keeper of the press or the publisher of the newspaper is a known person. He is a person whose valuable security or property is being forfeited. The description of the words and illustration, etc, which are held to infringe the law are communicated to him personally. In all these cases the order is communicated with full particulars to the specific person concerned by a special notice addressed to him and to nobody else, which notice is not made public. He is the person responsible in law for the printing and publication of the matter complained of, his property is being forfeited, and the law therefore provides that he should be explicitly told exactly what the Government had to complain of in his writings. Now in the case of section 12 the order of forfeiture relates not to a valuable security nor to a press. What it relates to is the objectionable book or document which will in many cases—in fact in most cases—be of most

trivial value. It is notified publicly in the various Government Gazettes and it is a notice to people at large warning them and all persons that may be concerned that a particular book or particular pamphlet has been proscribed. It is designed primarily, as the Hon'ble Mover of the Bill, Sir Herbert Risley, said, to deal with cases of literature either printed abroad and over which the Government has no control, or printed secretly in India, the printers or publishers being unknown. It may of course be used in respect of publications when the printer or publisher is known, but in such cases neither the security nor the press has been forfeited and the mere forfeiture of the document itself would come under one of the minor penalties of the Act. Now the reason for this difference which I have explained, the difference between section 12 and the difference between the other sections was very marked, and I am sure no person of ordinary prudence would recommend to us that it is incumbent upon Government itself to do the very thing which this section is intended to prevent, namely, the dissemination to the world at large of anarchical, revolutionary, inflammatory or seditious literature. Nor do I think that any one is likely to contend that if the printer or publisher is so afraid of the contents of the pamphlet or book that he is publishing that he keeps the name of the press at which it is printed secret that he is entitled to much consideration if his pamphlet or book is found objectionable and is forfeited.

Now in the case of literature produced outside India and imported into the country, the Government have all along possessed the power to prohibit its importation under the provisions of the Sea Customs Act and the forfeiture of such prohibited publications, which may be found to have escaped seizure at the seaports and to have found their way into the country, is the natural complement of the power to order their seizure at the ports. The bulk of the literature of this description under this particular section 12 is literature that is plainly revolutionary or designedly mischievous, though occasionally it may be found necessary to proscribe some document which though it may not be open to specially strong objection among European readers might yet be dangerous if circulated in India. In all these cases Government have no information as to how many copies have entered India or who their possessors may be, and to publish the contents of such document in Gazette Notifications can only be described as an act of extreme folly. It is therefore not possible for the Government to consent to the provisions of section 12 being amended so as to bring them into conformity with the other section that I have mentioned.

A good deal has been said, Sir, of the pledge given by the Hon'ble Mr. Sinha in his speech on the Press Act when it was being passed into law. But, as Mr. Pandit has just said, Mr. Sinha in describing the various safeguards was clearly dealing entirely with the safeguards afforded by the Act when either the security deposited on a press was being forfeited.

This will appear from the very remarks which the Hon'ble Mover himself quoted. After discussing the various circumstances under which such forfeiture, *z.e.* forfeiture of securities deposited by presses, can take place, Mr. Sinha proceeded to say 'Is it not a safeguard to provide that a man will not have his security forfeited without being told exactly what he has

written that is taken exception to? Obviously that passage in the Hon'ble Mr Sinha's speech could have no application to section 12, when no security is being forfeited and when in the majority of cases the possessor of the proscribed book is not the writer of the offending article, unless indeed he produced it secretly.

I may remind the Council that though the Press Act of 1910 was thoroughly examined by a Select Committee, some members of which put in notes of dissent, and although many Hon'ble Members proposed amendments to various sections of the Act, yet there was not a single reference made either in any of the minutes of dissent to the provision of this section 12, nor did a single Member move in the Council to amend that section. The Hon'ble Mover might perhaps be taken to suggest—on it may be the suggestion of some people in the Council—that this was mere inadvertence, but Mr Sinha was making his speech after the report of the Select Committee had been received. It was not a case merely of introducing the Bill, when Members had not had time to grasp its provisions. It is not a very long Bill. It had been examined line by line, clause by clause, by the Members of the Select Committee, and it was quite impossible therefore that a marked difference between section 12 and the other sections could have passed unnoticed by mere inadvertence. The fact is, as I have described, that the section was intended for a totally different set of circumstances, and that the difference in wording was absolutely intentional.

I will now turn to the second recommendation contained in the Resolution. I may say at once that the action to be taken under the Press Act was all along intended to be the action of the Executive Government, but power was rightly reserved to no authority lower than the Local Government itself. This of course was in itself a very valuable safeguard. No Local Government is going to publish abroad, or take action which may come before the public or the High Court which is likely to show that it has acted in a very foolish and irresponsible manner. The Acts in the Statute-book are full of large powers reserved to Local Governments, and it is always assumed that the Local Government is a responsible body who will exercise those powers with reason and discretion. The only issue that it was intended should be submitted to judicial decision, and that only to a special bench of the High Court, was the question whether the words, illustrations, etc., which formed the subject of forfeiture fell within the aim of section 4 of the Act or not. Sir Herbert Risley said on this point: 'So far I have dealt only with the powers which are given by the Act' that was his previous description, 'I will now turn to the check we have provided. This consists of an appeal to a special tribunal of three Judges of the High Court against any order of forfeiture passed by the Local Government. If it appears to the High Court that the matter in respect of which the order was passed does not come within the terms of section 4 of the Bill, then the High Court will set aside the order of forfeiture.' 'I think it will be admitted,' he goes on to say, 'that that is a very complete check upon any hasty or improper action by the Local Government. We have therefore,' he concluded, 'bailed all other legal remedies.' Consequently it is quite clear that there never was any intention to give any special bench of the High Court any other power except to decide Yes or No whether the words, etc., complained of did or did not come within the description contained in the clauses of section 4.

Very naturally, the Executive Government will always desire to comply with the forms and prescriptions of the law as the procedure to be followed, but the vital issue in this case—in all these cases—is whether the document concerned was or was not open to the construction placed on it which made its forfeiture proper,—whether that writing did or did not fall within the terms of section 4 of the Bill. That is the vital issue—vital to public interests and vital to private interests. If a technical error, and as I said, any irregularity of that kind would be unintentional on the part of the Government, if such irregularity were to come in and if that error in the form of the notification were to vitiate the action taken, then the most revolutionary pamphlet might have a free circulation while the error was being discussed and rectified. The Hon'ble Mover and various other speakers have laid great stress on the judgment of the learned Chief Justice in the Macedonia Pamphlet case. Now I have studied the judgment with all the care that a pronouncement by so high an authority deserves. So far as any judicial finding of the Hon'ble Judges is concerned, it would not be proper for me in this Council to enter upon any discussion as to the correctness or not of their decision. But the learned Chief Justice appears to have been under some misapprehension when he opined that the mischief chiefly aimed at by the Press Act of 1910 was to check anarchical crime and political assassination. Although the legislature included incitements to these crimes in this Act, it had already passed Act VII of 1908 dealing with such objects, and the main object of the Press Act was to exercise a preventive control over seditious and mischievous writings which the prosecution of individual offenders had hitherto failed to secure. I mention this point although it has not been specifically referred to by the Hon'ble Mover or any of the other speakers, because naturally enough the judgment of so high an authority as the learned Chief Justice of Bengal may at any time be quoted in connection with the Press Act. There are some remarks in that judgment which were based, partly, apparently on his apprehension that the Act had been intended for the particular class of case involving incitements to violence. To that extent his judgment might be held to support the suggestion made by some speakers, although not very directly put, that the stringent circumstances which called the Act into existence and necessitated its being passed were no longer so acute. The Hon'ble Mover himself has once or twice referred to the fact that this judgment might be held in some sense to justify the repeal of the Act—at any rate, to justify its considerable amendment. Therefore I wish to make clear what real object of the Act was and to remove any misapprehension to which this *obiter dictum* of the Chief Justice might have given

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Sir Herbert Risley, when moving the introduction of the Bill and explaining it, said that the check of incitement to murder and violence had been included in the Press Act of 1910, although it was already covered by the Press Act of 1908, because it was considered advisable to include such incitements in this Bill 'in order that we may, if necessary, take action of a less severe kind than that prescribed by the Act of 1908'. But besides such incitements there were five other classes of writings against which the Press Act of 1910 was directed, and these are all duly specified in section 4. Now it is quite true that the Chief Justice did complain that a mandatory portion of section 12 had not been complied with in the Government Notification, and he also alluded to

the very wide terms in which section 4 had been drawn. But you will find in his judgment that he committed himself to no specific statement that the interpretation placed upon the document then before the Court by the Government was itself far-fetched or arbitrary, and he emphatically stated his concurrence in the view that the ability to pronounce on the wisdom or unwisdom—I am not talking about the legality or illegality, the lawfulness or the unlawfulness—but to pronounce on the wisdom or unwisdom of the Executive action, had been rightly withheld from the Court, and he gave his reasons for that view in no uncertain terms.

I pass now to the statement that the obligation of the Government in issuing the Notification under section 12, of stating the grounds for its opinion, had not been discharged. The learned Chief Justice undoubtedly said that the Court had felt some embarrassment from the absence of these stated grounds in the Notification. But it has always been understood by Local Governments that when ordering the forfeiture of a document under section 12 it was sufficient ground for the Notification to specify which of the six clauses in section 4 and the sub-clauses attached to those sections were held to be applicable to the particular case. Thus if the possessor of a forfeited book were to ask why his book was forfeited, the Notification would tell him, because, in the opinion of the Local Government, it incited or tended to incite to murder, or it might be because it incited or tended to incite to the commission of an offence under the Explosive Substances Act, or incited or tended to incite to any act of violence, or again it might be that the writing complained of had a tendency to seduce any officer, soldier or sailor in the Army or Navy, or fell under one or other of the numerous sub-clauses, within which the writings might fall, and when the Notification appeared by a reference to it, the public at large, and the possessor of a proscribed document, would be able to judge what were the real reasons which led to the forfeiture of that document. But although the Chief Justice complained of embarrassment, neither he nor the Judges who sat with him indicated precisely what kind of facts or what kind of information would be held to comply with the letter of the section. The reproduction of the document *in extenso* would, as I have said, clearly be most unwise, and it would not put the chance possessor of the document in any better position than he was before. He has the document before him, mere reproduction of the document in the Notification will not put him in any better position to understand why it was being forfeited. Then the reproduction of certain passages which were deemed most objectionable would be equally undesirable for general publication in the Notification, and I think that every one would agree that it would be impossible for the Government to include in its Notification a discussion of the various arguments which had moved it. Especially would this be the case when there was a chance that the matter would come before a Judicial tribunal, or even if there were no other objections to such a course the Government could obviously not bind itself, in the public interest, to the particular arguments contained in the Notification. Indeed it must be remembered that in a great majority of these cases any delay in the order of forfeiture might result in the circulation of much dangerous and seditious and mischievous writings before action could be taken. Even were the Government to attempt to comply with this section in some further way by quoting the particular paragraphs or

lines of the offending document, yet in very many cases the pamphlets etc., that are proscribed are throughout frankly revolutionary, or else, their character may be deduced from their general effect on their readers, or may be deduced from their tone as a whole rather than from any single sentence extracted and divorced from its context. It is certainly a most relevant issue in this case, that although a considerable number—somewhere between 300 and 400—leaflets, books and publications have been proscribed by the various Local Governments since the Act was passed into law, no such forfeiture has ever before been challenged on this particular ground. For although it may be said that it is difficult to prove the negative in cases like these, and that the onus of proving, that the writing is not open to the construction put upon it by the Government, lies on him, yet in effect there is no doubt that his position will not prove so burdensome as might be thought. For there is the document before both of them, both sides have equal opportunities of putting before the Court the construction which, from their point of view, should be placed upon it, and it remains for the Court to decide upon the document and upon the arguments of both sides whether that construction is borne out by the document or is not.

The Hon'ble Mover referred to the cases in which the Press Act had been applied during the last three years, on information supplied him by the Home Secretary, but he included them all in one total, and various Members committed a small arithmetical error in pointing out that 800 cases in three years made a little more than one a day, while as a matter of fact—

The Hon'ble Mr. Bannerjee :— I said a little less than one a day

The Hon'ble Sir Reginald Craddock :—The Hon'ble Mover said a little less than one a day, but it was another speaker who said that it came to a little more than one a day. As a matter of fact there are at present 1,647 newspapers and periodicals in India. Since the Act was brought into force, security was deposited from presses under section 3 in 117 cases only, and from publishers under section 8 in 100 cases. Under section 4, that is to say, when security which was given by the printer or the keeper of a press was forfeited, there have been only 5 cases altogether. Under section 6 there has been no case, that is, where the offending press having had its security forfeited and having given further security, offends for a second time, and of that there has been no case.

Under section 9, that is the one under which security is forfeited, there have been two cases. Under section 11, when security is forfeited for a second time, there have been no cases. There have been altogether five applications only to High Courts in respect of orders of forfeiture or any other orders from which the law allows an appeal to the High Court, there have been only five cases, and, to the best of my knowledge, none of these have been successful. The large numbers which go to swell the total quoted by the Hon'ble Mover really relate to the proscriptions by Local Governments of these numerous leaflets and pamphlets, some of them of a very blood-thirsty kind, which have issued from time to time. In many of these cases also the Local Governments have merely repeated the notifications of other local Governments so that if you arrive at the total of the

documents affected by adding up the total of the proscriptions of each Local Government, you may largely overstate the case. I happen to be able to make this point the more clear, for I observed that the number of forfeitures have been largest in the Central Provinces and most of these forfeitures were made when I was Chief Commissioner of the Central Provinces. The reason why these forfeitures were large is because we reproduced and followed the lead of the surrounding provinces and from our central position we had colonists and immigrants of every race and language settled in our midst, and of course if a book or pamphlet is pernicious there is no reason why you should give exemption to particular people merely because they are not numerous. Although the total number of proscriptions in the Central Provinces comes to 291, yet the total number of original proscriptions were only three. That illustrates clearly how it is that these numbers from the various Provinces appear to represent a great number of proscriptions, though they total up to 1,100, as a matter of fact they have been just over 300. I think, therefore, that the Council will agree that the Press Act has been very moderately carried out and put into operation. Although the Hon'ble Mover from time to time, and other Honourable Members represent to us, that the tone of the Press has greatly improved and that the general situation has also greatly improved—it is a favourite topic with the Hon'ble Mover—it seems to me it would be very rash to remove these very things that have secured that improvement. You might as well say to us when after great labour and expense and many sanitary regulations we have improved the health of a town 'why have this expense and these harassing regulations, why not get rid of them?' What applies to the bodily health of a country may also apply to the mental health of its newspapers. Well, Sir, I am conscious that it may be said that although I have explained that there is nothing in the Act which can be held to be in any way contrary to any pledge or to its original intentions yet, from the judgment in the Macedonia case, it is difficult, and it remains difficult, for the possessor of a document to prove that the language of the document was wholly innocent and innocuous. I have drawn attention to the fact that the learned Chief Justice never said that that particular case of forfeiture was far-fetched. One of the Judges who sat with him, Mr. Justice Stephen, said —

I can well understand that in the mind of some Indian Muhammadans anger might easily and perhaps justifiably turn to a hatred of the Allies from which, making allowance for the inimitable of human nature, a hatred of the co-religionists of the Allies would seem but a short step, especially for those whose co-religionists are involved in a national disaster.

While therefore the action taken in the Macedonia Pamphlet case did not strain the law in any way, it certainly seems unnecessary for us to seek to amend the law on account of that case. The fact that it has been difficult in the past to prove that offending documents were innocent, seems to me the very surest testimony that the executive authorities have exercised their powers in no arbitrary or far-fetched manner, and have only proscribed those publications which are really dangerous in one of the ways mentioned in the Act.

As for the future, Sir, I have a very lively faith in the independence of our High Court Judges and I feel, no doubt, if at any time the Executive Government should use their powers under this Act rashly or oppressively, that the Judges will find no difficulty in surmounting these obstacles and in invalidating their illegal action.

The Hon'ble Pandit Madan Mohan Malaviya said —Sir, the remarks which have been made by the Hon'ble the Home Member with regard to this Resolution which is now before the Council have simplified matters to a great extent. The issues are now clear. There has been a great deal of confusion in a portion of the discussion as to the real issue that is before the Council. There has been no suggestion on the part of the Hon'ble Mover that the Press Act should be repealed, the only proposal before the Council is that it should be amended in certain specified matters. Now, Sir, objection has been taken to the proposal to amend the Act. It has been pointed out there is a difference in section 12 and section 4 and subsequent sections, and the difference is no doubt marked, but I submit that however different, this shows why the sections were framed as they were. Both the Hon'ble the Advocate-General and the Hon'ble the Home Member have mentioned that one of the reasons against stating the grounds upon which the forfeiture is ordered is that there will be a dissemination of the matter contained in the offending pamphlet. Now, Sir, the legislature provided against that. In the language used in section 4 it is said that there should be a notice in writing not to the world at large but to the keeper of the printing press. In section 6 again it is said 'The Local Government may, by notice in writing to the keeper of such printing press, stating or describing such words, signs or visible representations, declare,' etc. Then we come to section 9 in which it is again repeated 'The Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare.' So also in section 11. In all these sections the person concerned is the publisher or keeper of the printing press. The legislature have laid down that when an order for forfeiture is passed, the Local Government should state the grounds for the opinion upon which it has based its action, namely, that the words described in the pamphlet have offended within the meaning of the Act. But when we come to section 12 the language used is different. In that section the Council will notice it is said 'the Local Government may, by notification in the local official gazette, stating the grounds for its opinion, declare such book or other document to be forfeited'.

So long, therefore, as we are dealing with persons who are the keepers of printing presses or publishers of newspapers, a statement of the grounds upon which the Local Government has based its action will not lead to the dire results which the Hon'ble the Advocate-General and the Hon'ble the Home Member apprehend. It is only in the case of a forfeiture where a publication will have to be made in a local gazette that such a danger could have arisen, and there the legislature has guarded against it by saying that it is merely stating the grounds, in the other cases the words, etc., are to be reproduced. In section 4 and the other subsequent sections the Local Government is required to say by notice in writing to the keeper of such printing press, stating or describing such words, signs or visible representations. These words are omitted in section 12, which merely requires that the Local Government should state the grounds of its opinion and declare such newspaper, etc., forfeited. So, that, Sir, unless the matter comes before a judicial tribunal, as the Hon'ble the Home Member said, there would not be much danger of any dissemination of poisonous matter by reason of the statement of the object, and on that ground, I do not think that there need be any apprehensions. But as the Hon'ble the Advocate-General said very

clearly, the law requires that these grounds should be stated, and I do not think that my friend's amendment, so far as this part of the Resolution is concerned, can be supported. Not only because of the statement of the Advocate-General, but because of the language of the Act, it is clear that no such amendment is required so far as that section is concerned. But, Sir, the point before the Council raised by the Resolution is that relating to section 22. Section 4 and section 12 provide that on a person's doing a certain thing certain results will follow and it gives authority to the Local Government in those circumstances to issue an order of forfeiture of the printing press, newspaper, etc. No one questions that this Act, as the Hon'ble Home Member said, was passed to vest in the Executive power which would allow them to deal summarily with offending newspapers and printing presses and I do not doubt that that object was very clearly before the mind of the Legislature when the Act was passed, but the question, Sir, is that the Legislature has laid down that in a certain set of circumstances the Local Government will have the power to perform certain acts, to declare a printing press forfeited or to order security to be deposited or to order a book to be forfeited. The question now before the Council is—and it has been very powerfully raised in the judgment of the Calcutta High Court—if the Local Government, in the exercise of the power which the Act has vested in the Local Government, fails to observe the procedure which is laid down in the Act, is there to be any remedy for the person aggrieved by the act of the Local Government or not? The Legislature has thought it fit to say that there shall be certain safeguards. We need not go very much into a discussion as to what the pledges at the time were or what the intention was. We have got the Act, and we have to deal with it as it stands. Now, in the Act, Sir, in section 6 and subsequent section it is laid down that the Local Government shall describe the words or signs or visible representations which in its opinion, offend against the provision of the Act, and it also says that it shall describe the reason of its opinion. If the Local Government fail to describe it, I submit that the safeguard that is provided has been taken away. The safeguard lay in the Local Government reproducing the offending words in order to warn the person concerned that he had offended, and secondly, in the fact that when the Local Government came really to consider whether there was anything in the publication which came within the purview of the Act, it would have to calmly consider what the exact meaning of the words used was and that judicial act which the Local Government would have to exercise under the Act would provide the exact safeguard against any injustice being done to the person to whom the notice goes. Secondly, in the case of stating its opinion and the reason for its opinion—say, for instance, in the case of section 12, when the Local Government decides to publish in a newspaper that a certain book or pamphlet is to be forfeited on the ground that it offends within the meaning of section 4 of the Act, I submit the mere fact that the Government has to state its grounds was one of the safeguards provided by the Act. But now, Sir, suppose that the Local Government fails to respect the safeguard, fails, that is to say, to either refer to any words in the proclamation or in the notice, or it fails to state the grounds of its opinion, where the words are not referred to, for thinking the words do offend within the meaning of the Act, what is the remedy of the person? Throughout the British Empire, where there is any right given to a man there is a certain remedy provided in the criminal law of the country and the

Criminal Procedure Code The High Court, as being the highest Court of appeal, is vested with the power of reversing any act of any authority or person, including the Local Government and the Government of India, if it has not been done under the sanction of some statute or law. That power may be restricted, Sir, as it has been restricted under the Press Act that we are discussing. But then, if the restriction is not justifiable, as has been shown in the judgment of the Calcutta High Court, it is time that, in the interests of justice, the Government should consider the matter. If any person were to take away any person's property except strictly in accordance with the law, that person could go up to the High Court and say, 'My property has been unjustly taken away' exercise your revisionary jurisdiction and set aside the order'. Here was property taken away under section 12 of the Press Act. There was an application to the High Court in which it was pleaded that the property was not taken away in compliance with the provisions of section 12 of the Act. Now, Sir, the High Court was satisfied that it was so. The Hon'ble and learned Chief Justice said, in words which can never be mistaken, that he was satisfied that there was room for interference by him, but he said, he is barred. The Hon'ble the Chief Justice in his learned judgment says—in one passage he sums up the whole situation —

The Advocate General has convinced me that the Government's view of this piece of legislation is correct and that that the High Court's power of intervention is the narrowest. Its power to pronounce on the legality of the forfeiture by reason of failure to observe the mandatory conditions of the Act is barred. The ability to pronounce on the wisdom or unwisdom of the Executive order is withheld and its functions are limited to considering whether the applicant to day has discharged the almost hopeless task of establishing that his pamphlet does not contain words which fall within the all comprehensive provisions of this Act.

It goes on to say —

I describe it as an almost hopeless task because the terms of section 4 are so wide that it is scarcely conceivable that any publication would attract the notice of the Government in this connection to which some of the provisions of that section might not directly or indirectly, whether by inference, suggestion, allusion, metaphor or application or otherwise apply.

Now, Sir, the Hon'ble Home Member, in his admirable reply, said that there was reason and the learned Chief Justice did recognise the force of the provision that the High Court should not have the ability to pronounce upon the wisdom or unwisdom of the Executive, and that it had been rightly withheld, but the Hon'ble Member did not, and perfectly rightly he did not, justify the withholding of the power from the High Court to pronounce on the legality on the forfeiture by reason of failure to observe the mandatory conditions of the Act. I submit, Sir, that a very strong case has been made out for the Government to consider the whole position. We all, I think, are agreed—I don't think there has been one dissentient voice—that writing which is calculated to injure public interests, to excite evil passions or to create bad blood, should, under certain circumstances and certain safeguards, be absolutely checked.

We are all agreed that the press ought to be helped by restrictions and regulations to run a smooth and honourable course and not abuse the great liberty which it enjoys, but, Sir, bearing all that in mind, the Legislature has passed an enactment, which is admitted on all sides to be an enactment of a very repressive character, to regulate the action of the press. Under this Act those who offend can be punished. But suppose there are persons who do not offend, who are not guilty of violating the

MADAN MALAVIYA, AND THE HON'BLE SIR IBRAHIM RAHIMTOOLA.

provisions of the Act, is there a safeguard provided to protect them from an injury which they have not deserved, which the Government most certainly does not wish that they should suffer, and which was not contemplated? Now, Sir, that was the provision with regard to this section. Under sections 4 and 6 and under section 19 there are certain things which can be done, but section 22 definitely limits the operation, as the Hon'ble Judges of the High Court have held, of the interference of the High Court only to cases where the High Court is to ask the applicant to show that the words complained of do not fall within the definition of section 4. And the substance of the amendment now before the Council, Sir, is that the Government should be pleased, in view of the remarks of the Chief Justice and of facts which have come within its knowledge, to reconsider this Act and make up for the deficiencies both with regard to this section 22 by incorporating a provision to make it clear that the general power which the High Court possesses undoubtedly of remedying any wrong which may be done under cover of an Act is not taken away from the High Court so far as this is concerned and also—

The Hon'ble the Vice-President —I must ask the Hon'ble Member to resume his seat. He has already exceeded his time.

The Hon'ble Pandit Madan Mohan Malaviya.—May I conclude, Sir?

The Hon'ble the Vice-President —You may conclude in one minute.

The Hon'ble Pandit Madan Mohan Malaviya.—To make it clear that the High Court will still have the power to give a remedy to a person who has a real grievance that the provisions of the Act have not been complied with and that he has been wrongly dealt with, and I hope that when the times comes an amendment of other sections will also be considered and the Act put on such a basis that it should not be subjected to the severe criticism which this Act has been subjected to and similar to which no other Act of Government has ever been subjected.

The Hon'ble Sir Ibrahim Rahimtoola.—Sir, I think it will be recognised that the question at issue before the Council has been very ably discussed from all aspects of the case. The Hon'ble the Home Member and the Hon'ble the Advocate General have very ably laid before the Council the Government view of the case and they have explained in what manner the safeguards actually act under the provisions of the law. I think it will be admitted that, when the Press Act was passed in 1910, much of the non-official opposition was won over on the ground that adequate safeguards had been provided in the Act, and were it not for the weight and importance attached to the safeguards in the speeches made on the occasion, it is very likely that considerably greater opposition would have been extended to the measure when it was passed. I think the Council is indebted to the Hon'ble the Home Member for having clearly explained that though so much was made out of the safeguards, in actual practice the safeguards are nil, and I will try to explain why I say so. The Hon'ble Member said that the very fact that the local Governments were required

to exercise the powers under the Act was a safeguard. I admit it to be so. But the local Governments have got to act on the reports of their subordinate officers. Most of these publications are in the vernacular, which I do not think many members of the local Governments themselves know. They have therefore to rely upon the reports and the translations of their subordinates before making their orders. If that is regarded as a safeguard, the people who hold it as such are welcome to that opinion, but I think that this Council will want some further safeguards against the orders passed by a Local Government, which is after all the highest *executive* authority in each Province, and such safeguards have to be provided.

I should like to point out that the reference to be judicial courts provided in the Act is 'that appeals shall be heard by a bench of at least three judges of the highest court in a Province, if there are three or more judges in that Province, but that if there are only two judges they will form the tribunal of appeal, and if they disagree, that is to say, if one judge holds that the order ought to be set aside and the other hold that the order should stand, then the order does stand'. There is no further remedy for the appellant. If there are three judges, then the view of the majority prevails. Now, Sir, the safeguard in the Act, as very lucidly explained by the Hon'ble the Home Member, is merely this: that the judicial bench will decide whether the action of forfeiture taken by a Local Government comes within the provisions of section 4. If any words (and a few words in a book or pamphlet may be held to do so) come within what has been aptly described as the comprehensive provisions of section 4, then the order must stand. Be it remembered that when an appellant goes to the High Court in these matters he has to face heavy expenditure in costs, and when he goes up in appeal all that he can have is a declaration from the High Court that in the most comprehensive terms in which section 4 has been drafted and embodied in the Act a few words or signs, or visible representations do come within the purview of section 4, and therefore no relief is allowable. That to my mind completely disposes of the question of safeguards.

Then we come to the next point, namely that we should repose trust and confidence in the executive actions of Local Governments. No one wishes to raise at this stage the slightest question as to the manner in which these provisions are given effect to by Local authorities, but it stands to reason that when Government ask the Legislative Council to sanction legislative measures empowering large and comprehensive powers to be given to them, they ought to follow one of two courses. They ought to say, 'gentlemen, we want these powers to be conceded to us, and we want you to extend to us your trust and confidence in regard to the manner in which we will apply them'. That would be a perfectly straight course and if they do that and the Council accepts that view, there is nothing further to be said. But if they come to this Council and say that 'though we want certain powers in regard to matters which are under consideration and that in order that these powers may not be arbitrarily exercised, we suggest embodying in the Act certain safeguards to protect people who may be adversely affected by executive action under those provisions' we are entitled to ask that those safeguards should be effective and of such a character as to give the relief which Government themselves propose they should have. Now, Sir, the question at issue before the Council, when the

latter alternative is adopted by Government, is to see whether the safeguards which are deliberately intended to be provided are real and effective, or are merely illusory. If they have been declared illusory by the Calcutta High Court, the Hon'ble Mr Banerjee's Resolution, which merely asks that they may be made effective, should be accepted. I do not see that there is any reason why they should not be made so effective by an amendment of the Act.

Our experience in the Legislative Councils has shown that there have been frequent occasions on which Executive Governments have come before the Legislative Councils asking for amendments of existing enactments, on the ground that while the original intention of the legislature was in certain specified directions and the Bill had been drafted on those lines and passed, matters had gone to the High Court and that Court had put a different interpretation upon the words used, necessitating an amendment in order to carry out the original intention of the legislature. Well, Sir, that has often been the case so far as Bombay is concerned, and we must recognise that however able the draftsmen may be, they are not infallible. When Government have thus frequently approached the Legislative Councils to amend enactments in view of the interpretations put upon them by the High Court going against the original intentions, surely it is open to us to go to the legislature also and to say that in view of the safeguards deliberately provided in the Act having proved illusory, Government should take steps to introduce amendments in order to give effect to their original intentions and to make the safeguards real and effective.

As the Hon'ble Mr Banerjee's Resolution asks for nothing more, I beg to support it.

The Hon'ble Mr Chakaravarti Viziaraghavachariar —Sir, I wish to say a few words on the question before us. It seems to me that the issue is a very narrow one. What is asked for is a verbal amendment of the Act, and I hope that previous speakers will forgive me if I say that a great deal of their observations were somewhat irrelevant to the issue before us. The question broadly is whether this particular law was intended to be made in accordance with the declared intentions or not. Now the High Court has found that there was a considerable discrepancy between the declaration and the performance in respect of this enactment and the mover of the Resolution asks that this discrepancy may be removed. I do not at all see any rigid distinction between the provisions under section 12 and the provisions of the other sections relating to forfeiture in reference to appeals, because the law distinctly says that any man who has an interest in the subject of these forfeitures, no matter under what section the order for the forfeiture has been made, whether under section 12 or under the other sections, has a right to appeal to the High Court. The only question therefore to consider is, is the Act under consideration in accordance with the express declarations and intentions of Government? We have nothing whatever to do with the question whether the political position has since improved, or has remained stationary or has grown worse. We must try to understand our position somewhat retrospectively, and see what those who made this law intended it to be.

As regards this question, the High Court have distinctly declared that there is an inconsistency between the declaration and the performance.

The learned Advocate-General, I believe traverses this point. I always yield to him in construing law and wish to yield to his argument if I can. But I would remind him of the statement which he himself made in the course of the argument in the case of Mr Mahomed Ali. When the learned Chief Justice was about to refer to the speeches made in this Council at the time of the passing of the Act, the distinguished Advocate-General stopped him and said 'Please don't, look at the Act itself.' You are not at all entitled to look at the speeches.' He said this in the consciousness that there was a discrepancy between the speeches and the Act. If there was no such discrepancy, why did the learned Advocate-General adjure the Chief Justice not to look at the speeches? Therefore, so far as the argument of the learned Advocate-General is concerned, I believe he agrees with me that the performance was not in accordance with the declarations.

Then there is the speech of the Hon'ble the Home Member. I am somewhat embarrassed in understanding his position as much as were the Judges of the Calcutta High Court in understanding the Act. If he claims as a member of the Government to construe the Act with a competency which others do not possess, I humbly enter my respectful *caveat*. He was not here when the Act was passed, any more than I. As to the present and future intentions of Government in reference to the Act, no doubt he is Government, but as to the construction that should be put upon it when it was passed, I claim fellowship with him while disclaiming equal capacity. At that time, in view of what members on behalf of Government said, Government offered consolation to the members and to themselves that it was not a purely executive measure. I would call attention to Sir H. Risley's statement in this connection. It is said it is administered by the Executive Government. It may be administered by the Executive Government, but the measure is not an executive measure and it cannot be administered in the sense of a purely departmental order or of what is called an act of State. To the extent to which the executive Government administers this Act it is a judicial tribunal and the powers exercised are judicial, and what is more appeals are allowed by the law to the High Court.

It is in these circumstances that the question arises as to what was then intended. Now I do not see how a distinction made between section 12 and the other sections is germane to the question at issue. The Resolution may be divided into two parts. The first part relates to the question whether a statement of the grounds of action under certain sections of the the Act is imperative. The High Court have distinctly held that it is imperative there is no doubt about that. I cannot therefore understand the official position taken up, which, if it means anything clearly, practically amounts to saying "We do not care about what the High Court has said and we will do as we please." The Act has been construed and declared to have a particular meaning by the High Court and I believe even the Executive Government is bound to abide by that declaration and interpretation, unless and until it amends the Act itself. Taking the law therefore, as it is, so far as the first portion of the Resolution is concerned, no reform or amendment is needed in my opinion. Mr. Justice Woodroffe, Mr. Justice Stephen and the Chief Justice agreed that the words there are imperative and that it is not open to the Executive Government to violate that portion of the law and that they are bound to

state the grounds so as to give an opportunity to the person concerned to know what it is that he is called upon to answer. That being so, the first part of the Resolution may be left out of consideration altogether in my humble view.

As regards the latter part, I cannot understand the opposition at all. Is it plain that there was a defect or is it plain that there was not a defect? It seems to me that the trend of the argument is this. Apparently there was a defect, but as it suits us we wish to have it. That, I understand to be the upshot of the argument in opposition to the Resolution. The Act makes no distinction as regards an appeal to the High Court between one set of forfeitures and another set of forfeitures. I read the speeches in the Council, both when the Bill was introduced and when it was passed, to see if there was any distinction between this section 12 and the other sections. I find there is none. The learned Advocate-General confines the pledge of Mr. Sinha to one set of provisions but the speeches themselves do not warrant such an interpretation as the Hon'ble the distinguished Advocate-General has put upon them. It was admitted by the learned Advocate-General that the Notification of forfeiture relating to Mr. Mahomed Ali was unsatisfactory and that it was not drawn up by a lawyer. While the learned Judges in playful nony declared that what they were saying might come within the Act. Also all the three learned Judges say that they were considerably embarrassed in dealing with this case. The Chief Justice said so. In the course of argument Mr. Justice Woodroffe asked this question of the Advocate-General: 'Has the reference to this Court any reality at all? Can this Court fulfil any function at all?' While so, we may take it that all the three Judges were considerably embarrassed in interpreting the Act. Mr. Justice Stephens says: 'Never was an English Judge since the early days of English Jurisprudence in so helpless a position,' as he was in this case. So all these three Judges were considerably embarrassed. Is it the object of this law to embarrass the Judges, so that they may say 'We are helpless. We can't do anything'?

All that we ask for is to make the language of the Act plain. There is yet another aspect. And it relates to the question of the statement of grounds in the order of forfeiture. It is said that it would defeat the object of the Act to state the grounds in the order. Sir Herbert Risley said that 'this Act was intended to take the place of public opinion in India, that in England there is a strong public opinion and that it is a weapon of national education in this country.' May I know how this nation is to be educated by this Act and its administration? By embarrassing the learned Judges of the High Court? For God's sake, let us know how is this Act to educate us? It may repress us, it may cause inconvenience to us, but to say that it will educate us is to use language which has no meaning if it is kept in its present state. So this is the law which is to be a means of national education—a weapon of national education which will embarrass the brilliant Judges of the Calcutta High Court is an extraordinary invention worthy of 20th century civilisation. All we ask is this—'Please put the law in such a way that ordinary common sense can understand what is meant by it.' I cannot at all understand, therefore, the attitude of the Hon'ble the Home Member, and I am somewhat surprised that Government does not hold out any hope to us that it will hand the law over to a learned expert to see in the light of what is said whether it cannot be improved. I expected the Hon'ble the Home Member would have given

us an answer like that, and that the point raised will be sympathetically considered. My disappointment is very keen that such a hope is not held out to us. I do not think it necessary to allude to the other observations made by the Hon'ble and learned speakers on either side, because in my opinion they are beside the issue. The Hon'ble the Home Member assured us that the independence of the High Court would be maintained in its integrity, and that where any obstacles are thrown in its way he has expressed the hope that it will surmount them. I am thankful for the assurance and I join in the hope. It strikes me that before this judgment was passed, there are humble lawyers like myself who would have thought that the High Court would have set aside this order as *ultra vires* and void, which the Advocate-General and the Home Member both say was declared by it to be valid order. I am sorry to state that to say so is a brilliant quibble. The High Court did say that the order passed by the Government was *ultra vires*—it was an order in no legal sense. But they say 'we cannot give effect to our opinion by reason of this section 12.' To say that the High Court found this order to be valid is not correct. They found it *ultra vires*, illegal and void. Mr Justice Stephen asked whether he was prevented from looking into this case because the Government had no jurisdiction to pass such an order. Therefore to say that the High Court has declared such an order to be valid is, I respectfully suggest, a splendid mistake, a brilliant quibble.

On the whole therefore, Sir, the question is 'Have we or have we not to revise this Act, intended not to suppress actual crime but to repress the roots of crime and intended as a means of national education. What the Government say amount to this. 'The High Court may say and do what they like, but we will pass our orders as we have been hitherto doing under the Act.' While in this unsatisfactory state the law is, the administration must continue unsatisfactory too. I respectfully submit that the case made out by the Hon'ble Mover of the Resolution as regards the necessity for the reform of the latter portion of the Act, that section 12 should be amended, has not been answered at all by Government.

The Hon'ble Sir Gangadhar Chitnavis—Sir, I do not agree with the Hon'ble Mr Banerjee that the time has come when the Act should be repealed. I supported the measure in 1910 from an honest belief in its utility in the existing circumstances. The experience gained in the interval in the working of the Act has, if anything, confirmed me in the opinion that it was necessary and good, both for the Government and the public. The administration of the law has, as pointed out by the Home Member, so far been satisfactory and unattended by any real or general hardship, while the mere existence of such an Act has had a preventive and deterrent effect upon the malevolent activity of a disaffected portion of the Press. There is now less of incitement to violence, and there can be no doubt that the most potent means of exciting hatred in the public mind before has been the cheap and irresponsible Press. The Act has thus justified its existence. But this conviction does not prevent me from advocating an improvement in the language of the Act. To-day's discussion also shows that there is a difference of opinion among the best of lawyers, that an ambiguity exists, and that the law is not clear on certain points. And so it will not be improper if the ambiguity and cause of embarrassment are removed by making the provisions quite clear.

The Hon'ble Mr Banerjee :—Sir, I will not, at this hour, take up many minutes—especially in view of the criticisms which have already been offered by my Hon'ble friends over there on the speech of the Hon'ble the Home Member and of the Hon'ble the Advocate-General. Sir, it is abundantly clear from the discussion that has taken place, that, barring one exception of course, there is a general consensus of opinion as regards the course that should be followed in connection with the Press Act. I think we are all on this side of the House agreed that if there are safeguards provided in the law, those safeguards are inoperative and that they should be made effective. I am sorry that there was a disposition on the part of the Hon'ble the Home Member to go back upon the declarations of the past and discard the safeguards provided in the law itself. For the Hon'ble the Home Member observed that there was a danger in publicity. I am afraid it is too late to make that complaint at this hour. Section after section explicitly say that where notice of forfeiture is issued the grounds should be stated. I hope the Government of India and the various Local Governments will give effect to this part of the law, such as that law is. We were expecting some kind of assurance from the Hon'ble the Home Member that in future when a notice of forfeiture was issued the notice would contain the grounds—would contain a statement of the words, signs or visible representations as indicated in the law. I must confess to a sense of disappointment that an assurance to that effect was not forthcoming.

But the Hon'ble the Home Member must have been convinced of the trend of public opinion as regards this matter. There is practically unanimity in our ranks, amongst the non-official Indian Members, that the law should be amended, so as to render operative the safeguards which have been provided, and if on this occasion there is to be an adverse vote, as I fear there is likely to be, I feel that Council have not heard the last of this matter, because there is a body of public opinion in favour of an amendment of this Act, and we, as representatives of the Public voicing the public sentiment, will feel it our duty to give expression to that sentiment within the walls of this Chamber. Whatever may be the outcome of this debate, I am sure, I fear, that the matter will have to be brought before this Council again.

The resolution was rejected by 40 votes against 17.

Rules made by the Chief Court, Punjab, under the power conferred by section 21 of the Indian Press Act, I of 1910, to regulate the procedure in the case of applications under section 17, the amount of the costs thereof and the execution of the orders passed thereon, (No 11 dated the 21st April 1915)

1 These rules may be cited as "The Rules under the Indian Press Act, 1910." They shall come into operation on the 1st day of February 1913, and shall apply to all applications made to, and all proceedings taken in, the Chief Court of the Punjab at Lahore, under the Indian Press Act, 1910, hereinafter referred to as "The Act."

2 Every application to the Chief Court under section 17 of the Act, to set aside an order of forfeiture under sections 4, 6, 9, 11 or 12, shall be made by the presentation of a petition which shall be signed by the applicant and verified at the foot by the affidavit of the applicant.

3 The petition shall be written in the English language on foolscap paper or other paper similar to it in size and quality, bookwise, and divided into paragraphs numbered consecutively. Dates and sums mentioned in the petition shall be expressed in figures

4 The petition shall be headed —

In the Chief Court of the Punjab, at Lahore ”

“ In its special Bench constituted under Act I of 1910, ”

and shall be name intituled “ In the matter of the (name, if any) Printing Press,” or “ the (name or description) book, document ” or “ newspaper ” as the case may be

5 The petition shall state what the interest of the applicant is in the property in respect of which the order of forfeiture has been made and all documents and copies thereof in proof of such interest, together with a copy of the notice of forfeiture under sections 4, 6, 9, 11 or 12 of the Act as the case may be, shall be annexed as exhibits to the petition

6 The petitioner shall state the ground or grounds on which it is sought to set aside the order of forfeiture

7. The petitioner shall with his petition attach a receipt for a deposit of rupees fifty to cover the cost of printing the record.

8 All Vernacular documents annexed as exhibits to the petition and all Vernacular documents relied on by the applicant, and intended to be tendered in evidence, shall be translated into English by the Chief Court Translator, or Translators, so that no question may arise as to the accuracy of the translations or the admissibility in evidence of the documents and the translations annexed to them by reason of defects in such translations

9. The petition with exhibits annexed thereto and their translations, if any, together with a copy of such petition and exhibits with translations, shall be presented to the *Registrar*, who will constitute a special Bench composed of three Judges and appoint a day for the hearing and determination of the application under the orders of the Chief Judge

10 The Registrar shall forthwith give notice of the filing of the application to the Government Advocate and shall request him to obtain from Government and to furnish to the Court, as soon as possible, a copy of the particular newspaper, book, or other document containing the words, signs or visible representations on which the declaration of forfeiture was based.

11. Notice in writing of the day appointed for the hearing and determination of the application shall be given by the Deputy Registrar to the Chief Secretary to Government, Punjab, and the copy of the petition and exhibits with translations, if any, mentioned in rule 9, shall accompany such notice.

12 A printed paper book shall be prepared and completed under the orders of the Deputy Registrar, at least one week before the day fixed for the hearing and the determination of the application.

13 There shall be ordinarily printed 30 copies of the paper-book but the Deputy Registrar may, when necessary, direct a larger number to be printed

**RULES MADE BY THE CHIEF COURT OF PUNJAB, UNDER THE INDIAN
PRESS ACT, 1910**

14. In the absence of a special order the printed paper-book shall ordinarily contain—

- (1) A reprint of such communications, articles, chapters, or passages as are specified in the declaration of forfeiture, or, if these are written in a language other than English, a translation thereof prepared as directed in Rule 8 above.
- (2) The declaration of forfeiture in respect of which the application is made
- (3) The application and the affidavit of the applicant
- (4) Such exhibits annexed to the application, and their translations as the Court may order to be printed

15 If the deposit required under Rule 7 prove insufficient to cover the cost of the printed paper-book, the Deputy Registrar may, by a notice in writing, require that such further deposit as seems to him necessary shall be made within one week

16 If such further deposit be not made within the time specified in the notice, the application shall be placed, without notice to the applicant, before a Special Bench composed of three Judges, which will either dismiss the application or pass such other order as may be suitable

17 The applicant and his counsel shall be entitled to receive copies of the printed record on application to the Deputy Registrar one week before the date fixed for hearing

18 At the foot of every printed paper-book shall be noted the amount of the printing and incidental charges and the person from whom levied, and such amount shall be included in the costs of the proceedings, unless, the Court shall otherwise direct

Should the amount so charged be less than the sum or sums deposited under rules 7 and 15, the Deputy Registrar shall refund the balance to the applicant

19 The table of fees now in force in this Court shall be applicable to all applications under the Act and proceedings thereon and costs payable in respect of such applications and proceedings shall be taxed, when so directed, by the Taxing Officer of this Court

20 Every summons and warrant of arrest issued by the Court shall be in writing in duplicate, signed and sealed by the Deputy Registrar of the Court and shall ordinarily be sent to the District Magistrate within the local limits of whose jurisdiction the summons is to be served or the warrant executed

21 The provisions of the Code of Civil Procedure and the Rules and Orders relating to the execution of decrees and orders shall be applicable to the execution of orders passed by the Chief Court on applications under the Act

238 FOREIGN DEPARTMENT NOTIFICATION No. 1387-I-B., DATED THE
11TH AUGUST 1914

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and of all other powers enabling him in that behalf, the Governor General in Council is pleased to apply the Indian Naval and Military News (Emergency) Ordinance, 1914 (Ordinance No 1 of 1914), in so far as it may be applicable to the areas specified in the first column of the schedule hereto annexed

Provided, first, that in the Ordinance as so applied, references to a Local Government shall be read as referring to the authorities specified in the second column of the said schedule

Provided, secondly, that for the purpose of facilitating the application of the said Ordinance, any Court exercising jurisdiction in any area specified in the first column of the said schedule may construe the provisions of the said Ordinance with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before the Court

Schedule

1. The railway lands described in the notification of the Government of India in the Foreign Department, No. 784-I B., dated the 9th April 1913, as subsequently amended, and in the first and second columns of the schedule annexed thereto	The authorities severally specified in the third column of the same schedule
2 The Baroda Cantonment	The Resident at Baroda
3. The Administered areas in Central India, as described in the Notification of the Government of India in the Foreign Department, No. 2365 I B., dated the 14th November, 1912	The Agent to the Governor General in Central India.
4. The Administered areas in the Hyderabad State, as described in the Notification of the Government of India in the Foreign Department, No. 582-I. B., dated the 22nd March 1913.	The Resident at Hyderabad.
5. The Civil and Military Station of Bangalore	The Resident in Mysore
6. The Abu area, as described in the Notification of the Government of India in the Foreign Department, No 679-I B., dated the 2nd April 1913.	The Agent to the Governor General in Rajputana.
7 The British Reserve, Manipur, as defined in the Notification of the Government of India in the Foreign Department, No 533 I. B., dated the 12th March 1909	The Chief Commissioner of Assam.
8 Berar 	The Chief Commissioner of the Central Provinces

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